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THE ACT RESPECTING LABOUR STANDARDS

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arly vacation • Special clothing • Absen

Minimum conditions of employment

The Act respecting labour standards sets the minimum conditions of employment for all Québec employees, thereby establishing the foundations of a universal system of labour standards.

The Act deals with such topics as:

- 1 wages;
- 2 hours of work;
- 3 annual leave;
- 4 paid statutory holidays;
- 5 absences owing to sickness or accident;
- 6 absences and leaves for family or parental matters;
- 7 notice of termination of employment;
- 8 notice of collective dismissal;
- 9 recourses against pecuniary complaints;
- 10 recourses against prohibited practices;
- 11 recourse against a dismissal not made for good and sufficient cause.

The conditions of employment agreed upon by the employer and the employee must not be less than those stipulated in the labour standards, even if there is a collective agreement or a decree, subject to a dispensation permitted by the Act.

Who is entitled to the labour standards?

All employees of Québec are subject to the Act respecting labour standards.

However, some employees are totally or partially excluded from the application of the Act. This is true, in particular, for:

- 1 employees whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person, in that person's dwelling, including, where so required, the performance of domestic duties that are directly related to the immediate needs of that person, if the employee's duty is performed on an occasional basis, unless the work serves to procure profit to the employer, or if the employee's duty is performed solely within the context of assistance to family or community help;
- 2 the employees governed by the Act respecting labour relations, vocational training and manpower training in the construction industry (however, these employees benefit from the right to absences owing to a criminal offence, to the leaves following a criminal offence or a suicide, as well as the right to certain absences and certain leaves for family or parental matters and the right to remain at work beyond the normal retirement age);

- 3 students who work during the school year in an establishment selected by an educational establishment pursuant to a job induction program approved by the ministère de l'Éducation;
- 4 health service and social service beneficiaries working, as part of their physical, mental or social rehabilitation, in a CLSC, a social service centre, a hospital centre or a reception centre;
- 5 senior managerial personnel, who nevertheless benefit from the right to absences owing to a criminal offence, to the leaves following a criminal offence or a suicide, as well as the right to certain absences and certain leaves for family or parental matters and the right to remain at work beyond the normal retirement age.

Finally, those persons working in enterprises under federal jurisdiction are governed by the Canada Labour Code and, as a result, cannot avail themselves of any provision of the Act respecting labour standards. These undertakings include chartered banks, interprovincial and international transport businesses, radio stations, etc.

Work done by children

The Act respecting labour standards prohibits an employer:

- 1 from having a child do work that is disproportionate to his abilities or that is likely to adversely affect his education, health or development;
- 2 from having a child under 14 work without the written consent of his parent;
- 3 from having a child who is required to attend school work during class hours;
- 4 from having work done, between 11 p.m. and 6 a.m. on the following day, by a child who is required to attend school, except if the child delivers newspapers or if he works as a creator or a performer in certain artistic production fields.

Moreover, an employer who has work done by a child who is required to attend school must ensure that this child can be at the family residence between 11 p.m. and 6 a.m. on the following day. However, this obligation does not apply to a child who works as a creator or a performer in certain artistic production fields or if he works for a social or community organization, such as a vacation camp or a recreational organization if the conditions of employment are such that he lodges at the employer's establishment and if he is not required to attend school the next day.



Wages

The minimum wage is set by the Government of Québec. However, it is the Commission des normes du travail which supervises the application thereof and which receives complaints concerning the minimum wage.

No benefit having pecuniary value (automobile, accommodations, etc. supplied by the employer) may result in the employee receiving less than the minimum wage.

Minimum wage rates

	General rate	Employees receiving tips rate	Employees in the clothing industry rate
May 1, 2009*	\$9.00 per hour	\$8.00 per hour	\$9.00 per hour

* The minimum wage rates are subject to change. Find out more from the Service des renseignements at the Commission des normes du travail.

Who is entitled to the minimum wage?

Employees who are subject to the Act respecting labour standards are entitled to the minimum wage set by the Québec government.

Some employees subject to the Act respecting labour standards are nonetheless excluded from the application of the minimum wage. They are:

- 1 a student employed in a social or community non-profit organization such as a vacation camp or a recreational organization;
- 2 a trainee under a program of vocational training recognized by law;
- 3 an employee entirely on commission who works in a commercial undertaking outside the establishment and whose working hours cannot be controlled;
- 4 an employee assigned mainly to non-mechanized operations relating to the picking of processing vegetables.

Part-time workers and wages

No employer may remunerate an employee at a lower rate of wage than that granted to other employees performing the same tasks in the same establishment for the sole reason that the employee usually works less hours each week.

Employees earning twice the minimum wage are however excluded from this provision.

Differences in treatment

No employer may grant an employee subject to the Act respecting labour standards conditions of employment that are less advantageous than those granted to other employees who perform the same tasks in the same establishment for the sole reason of his date of hiring.

These conditions of employment concern in particular:

- 1 wages;
- 2 the duration of work;
- 3 paid statutory holidays;
- 4 annual leaves;
- 5 rest periods;
- 6 absences and leaves for family or parental matters;
- 7 notice of termination of employment.

Deductions

An employer may make deductions from wages when he is required to do so pursuant to an act, a regulation, a court order, a collective agreement, a decree, or an obligatory supplemental pension plan. Every other deduction from wages must be accepted in writing by the employee. The specific purpose for which the deduction is made must be mentioned in this writing. The employee can cancel this authorization at any time.

Room and board

When working conditions oblige the employee to reside or to take his meals at the employer's establishment or residence, the maximum amount* that he can charge an employee is:

- \$1.50 per meal up to a maximum of \$20.00 per week;
- \$20.00 per week for the room;
- \$40.00 per week for room and board.

However, an employer may not require an amount for room and board from a domestic who is housed or takes meals in the employer's residence.

* These rates are effective since November 1, 1996 and are subject to change. You can check their validity by calling the Commission des normes du travail.

Special clothing

In the case where an amount of money may be required from the employee for the purchase, use or upkeep of special clothing, it must not cause the employee to receive less than the minimum wage. In all cases, when an employer requires that special clothing be worn, he must provide it free of charge to the employee paid at the minimum wage. If this special clothing identifies the employee as being an employee of the establishment (e.g.: clothing with logo), the employer must then provide this clothing free of charge to the employee. Moreover, the employer cannot require that an employee purchase clothing or accessories that are items in the employer's trade.

LABOUR STANDARDS

In the case of an employee receiving tips, his wages must be increased by the reported or attributed tips for the calculation of the minimum wage for the application of this standard.

Use of material, equipment or merchandise

When the employer requires that the employee use material, equipment, raw materials or merchandise in the performance of a contract, he must supply them free of charge to an employee paid at the minimum wage. Moreover, he cannot require from an employee an amount of money for the purchase, use or upkeep of these articles that would cause the employee to receive less than the minimum wage.

Payment

When must the wages be paid?

The employer has one month to remit the first payment. Thereafter, the wages must be paid at regular intervals of not over 16 days, or one month in the case of managerial personnel. If the day of payment falls on a general statutory holiday, the wages must be paid on the working day preceding that day.

Any amount in excess of the regular wages, such as a bonus or overtime, earned during the week preceding payment of the wages may be paid with the subsequent regular payment.

Pay sheet

At the time of each payment, the employer must remit to the employee a pay sheet enabling him to verify the computation of his wages. That pay sheet must include the following information, where applicable:

- 1 the name of the employer;
- 2 the name of the employee;
- 3 the identification of the employee's occupation;
- 4 the date of the payment and the work period corresponding to the payment;
- 5 the number of hours paid at the prevailing rate;
- 6 the number of hours of overtime paid or replaced by a leave with the applicable premium;
- 7 the nature and amount of the bonuses, indemnities, allowances or commissions that are being paid;
- 8 the wage rate;
- 9 the amount of wages before deductions;
- 10 the nature and amount of the deductions effected;
- 11 the amount of the net wages paid to the employee;
- 12 the amount of the gratuities declared by the employee or that the employer has attributed to the employee (hotel and restaurant field).

Tips

Tips are made up of the sums voluntarily paid by patrons or service charges added to the patron's bill, but do not include administration fees added to this bill. An employer cannot require that an employee pay credit card costs. Whatever form tips take, they cannot become part of the wages. Consequently, the employer must pay the employee at least the minimum wage prescribed without taking into account the tips that he receives.

Employee receiving tips

An employee receiving tips is an employee who usually receives tips and who works:

- 1 in an establishment that offers lodging to tourists in return for payment, including a campground;
- 2 in a place where alcoholic beverages are sold for consumption on the premises;
- 3 for an enterprise that sells, delivers or serves meals to be eaten off the premises; or
- 4 in a restaurant, except if it is a place where the main activity consists in the providing of food services to customers who order or choose the items at a service counter and who pay before eating.

Payment of the tip

The tip may be paid directly or indirectly to employees. It is paid directly by the patron to the employee, when it is given from hand to hand.

Tips are paid indirectly when the employer collects tips on behalf of the employee under either of the following circumstances:

- 1 the patron uses his credit card or debit card;
- 2 the patron pays the employer service charges added to the bill.

Whether tips are paid directly or indirectly, they belong to the employee who rendered the service. If the employer collects the tips, he must give them in their entirety to the employee who rendered the service.

Distribution of tips

The employer cannot impose the sharing of tips among employees. Nor can he intervene in any way whatsoever in the establishment of a tip-sharing arrangement.

Only those employees entitled to tips may agree to distribute among themselves the tips that belong to them or to distribute a portion thereof to other employees in the establishment. However, an employee who benefits from a redistribution of tips does not become, by reason of this fact, an employee having to be paid at the minimum wage rate applicable to employees receiving tips.



Reporting of tips

When calculating indemnities related to reporting for work, statutory holidays, the National Holiday, annual leaves, bereavement, marriage and notice of termination of employment, the employer must take into account the wages increased by tips which the employee reported or which the employer attributed to him.

The Act respecting labour standards requires that the employer accept the statement of tips made by the employee and protects the employee against any reprisals that an employer may take against him by reason of the exercise of his rights.

Duration of work

The regular workweek, as fixed by the Act, makes it possible to determine the time from which an employee is working overtime and must be paid accordingly. A regular workweek is by no means a time limit beyond which the employee may refuse to work.

Duration of the regular workweek

For the purposes of computing overtime, the regular workweek is **40 hours**.

However, for some employees the regular workweek is as follows:

- 1 employee in the clothing industry 39 hours
- 2 watchman who guards a property for an enterprise supplying a surveillance service 44 hours
- 3 employee working in a forestry operation or a sawmill 47 hours
- 4 employee who works in an isolated area or in the James Bay territory 55 hours
- 5 watchman who does not work for an enterprise supplying a surveillance service 60 hours

To whom does this standard apply?

To all Québec workers subject to the Act respecting labour standards except for the following workers:

- 1 a student employed in a vacation camp or community or social non-profit organization such as a recreational organization;
- 2 a manager of an enterprise;
- 3 an employee who works outside an establishment and whose working hours cannot be controlled;
- 4 an employee assigned to canning, packaging and freezing fruit and vegetables during the harvesting period;

- 5 an employee of a fishing, fish processing or fish canning industry;
- 6 a farm worker;
- 7 an employee whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person, in that person's dwelling, including, where so required, the performance of domestic duties that are directly related to the immediate needs of that person, unless the work serves to procure profit to the employer.

Staggering of working hours

When the Commission des normes du travail gives its authorization, the employer can stagger the working hours over several weeks. The authorization of the Commission is not necessary when the staggering of hours is provided for under a collective agreement or decree.

How to compute overtime

Hours worked in addition to the regular workweek must be paid with a premium of 50% (time and a half) computed on the basis of the employee's prevailing hourly wage.

For the purposes of computing overtime, annual leave and paid statutory holidays are considered days worked.

The employer may, at the request of the employee, replace the payment of overtime by a leave of a duration equal to the overtime worked, increased by 50% (7 hours = 10 hours and 30 minutes).

Working hours

Presence at work

An employee is deemed to be at work and must be paid:

- 1 when he is at the disposal of his employer on the work premises and is required to wait for work to be assigned to him;
- 2 during the time devoted to breaks granted by the employer;
- 3 during the time of a trip required by the employer;
- 4 during any trial or training period required by the employer.

The employer is required to reimburse the employee for the reasonable expenses incurred when, at the employer's request, the employee is required to travel or take part in training.

Coffee break

A coffee break is not mandatory, but when it is granted by the employer, it must be paid and included in the computation of the hours worked.

Meals

After a period of work of five consecutive hours, the employee is entitled to a 30-minute rest period (without pay) for meals. If he is not authorized to leave his work station, this period shall be remunerated.

LABOUR STANDARDS

• Special clothing • Absences owing to
 ly vacation • **Special clothing** • Absen
 work • Early vacation • Special clothing
 • Refusal to work • Early vacation • Sp
 ties and tips • **Refusal to work** • Ea

Weekly rest period

Each week, the employee is entitled to a rest period of not less than 32 consecutive hours. In the case of a farm worker, the day of rest can be postponed to the following week, if the employee consents thereto.

Indemnity for reporting for work (minimum of three hours)

An employee who reports for work at his place of employment at the express demand of his employer or in the regular course of his employment, and who works fewer than three consecutive hours, is entitled to an indemnity equal to three hours' wages at the prevailing hourly rate, increased by gratuities, except where the provisions concerning overtime ensure him a greater amount.

However, this provision does not apply in the case of superior force (e.g.: fire) or when the employee is hired for periods of fewer than three hours (e.g.: some ushers, school bus drivers, school crossing guards, etc.).

The right to refuse to work

An employee may exercise his right to refuse to work

- 1 daily after:
 - more than 4 hours after regular daily working hours or more than 14 working hours per 24-hour period, whichever period is the shortest
 - more than 12 hours per 24-hour period for an employee whose daily hours are flexible or non-continuous.
- 2 weekly after:
 - more than 50 hours, unless there is an authorization to stagger working hours or
 - more than 60 hours for an employee working in an isolated area or in the James Bay territory.

However, the right to refuse work cannot be exercised:

- 1 if the exercise of this right jeopardizes the life, health or safety of workers or the population;
- 2 when there is a risk of destruction or serious deterioration of movable or immovable property or in any other case of superior force;
- 3 if this refusal is inconsistent with the employee's professional code of ethics.

Annual leave

Entitlement to an annual leave with pay is acquired during a period of 12 consecutive months. This period, known as the reference year, is determined by the employer or, failing that, by the Act respecting labour standards. In this latter case, it extends from May 1st to April 30th, unless a decree or an agreement fixes a different starting date for that period.

The length of the annual leave and the amount of the indemnity vary according to the uninterrupted service of the employee (taking into account the reference year in effect in the enterprise). Prior to the start of his leave, the employee must receive in a lump sum his annual leave indemnity, equal to 4% or 6% (according to his uninterrupted service) of the annual gross wages earned during the reference year.

Uninterrupted service	Length of leave	Indemnity
Less than 1 year	1 day per month of uninterrupted service, without exceeding 2 weeks	4%
1 year to less than 5 years	2 consecutive weeks	4%
5 years or more	3 consecutive weeks	6%

For the employee in the clothing industry, the length of the annual leave and the amount of the indemnity vary as follows:

Uninterrupted service	Length of leave	Indemnity
Less than 1 year	1 day per month of service, without exceeding 2 weeks	4%
1 year to less than 3 years	3 weeks, including 2 uninterrupted weeks	6%
3 years or more	4 weeks, including 3 uninterrupted weeks	8%

An employee who already benefits from an annual leave of two consecutive weeks is entitled, if he makes application therefor, to an additional annual leave without pay to bring his annual leave to three weeks.

It is possible that this additional leave will not be a continuation of the annual leave to which the employee is already entitled. However, this additional leave without pay may not be divided or replaced by a compensatory indemnity.



The annual leave of Peter, who is credited with less than one year of uninterrupted service*

We are in May 2009 and Renee must prepare the schedule of the 2009-2010 annual leaves of her employees. She wonders how to calculate Peter's indemnity and how many days he will be entitled to, given the fact that he has only been working since August 17, 2008.

1) First, take into account the undertaking's reference year. It extends from May 1st to April 30th.

2) Calculate the indemnity.

Peter earned \$11,000 during the reference year, namely from August 17, 2008 to April 30, 2009.

Wages received during this period	\$11,000
X 4% based on his uninterrupted service	X 4%
=	=
Annual leave indemnity	\$440

3) Next, determine the number of days of annual leave to which Peter is entitled.

When the employee is credited with less than one year of uninterrupted service with the employer, the length of his annual leave is determined at the rate of one working day per month of uninterrupted service.

It is necessary to count Peter's number of complete months of uninterrupted service, namely from September 2008 to April 2009. Thus, Peter worked eight complete months during the reference year. The month of August cannot be considered given that Peter has only been working since August 17, 2008. Consequently, August is not a complete month. As a result, Peter is entitled to eight days of leave.

Renee will have to pay Peter an annual leave indemnity of \$440 and grant him eight days of annual leave.

Examples of how to calculate the annual leave indemnity*

Mary has three years of uninterrupted service and earned \$25,600 at the end of the reference year. Paul is credited with eight years of uninterrupted service and earned \$30,000 in gross wages. What annual leave indemnity are they entitled to?

When the employee was not absent during the reference year by reason of sickness, maternity leave or accident, he is entitled to an indemnity of 4% or 6% depending on the uninterrupted service that the person has accumulated.

Calculation method

FORMULA	Mary's indemnity	Paul's indemnity
Gross annual wages	\$25,600	\$30,000
X 4% or 6% depending on the uninterrupted service	X 4%	X 6%
=	=	=
Annual leave indemnity	\$1,024	\$1,800

Mary will receive \$1,024 as an indemnity for her two weeks of annual leave, and Paul will receive \$1,800 for his three weeks of annual leave.

* The calculation formulas are given for information purposes. For more details, please refer to the Act respecting labour standards and its regulations or get in touch with the Service des renseignements.

Who is entitled to an annual leave with pay?

Employees subject to the Act respecting labour standards are entitled to the annual leave provided for under the Act.

Some employees subject to the Act respecting labour standards are nonetheless excluded from the provisions related to the annual leave. They are:

- 1 a student employed in a vacation camp or in a social or community non-profit organization such as a recreational organization;
- 2 a real estate agent within the meaning of the Real Estate Brokerage Act (chapter C-73.1), entirely remunerated on commission;
- 3 a representative of a securities dealer or adviser within the meaning of section 149 of the Securities Act (chapter V-I.1), entirely remunerated on commission;
- 4 a representative within the meaning of the Act respecting the distribution of financial products and services (1998, chapter 37) entirely remunerated on commission;
- 5 a trainee within the framework of a vocational training program recognized by law.

LABOUR STANDARDS

gratuities and tips • Refusal to work
 • Break period • Gratuities and tips •
 employee status • Break period • Gratuitie
 s • Maintaining employee status • Brea
 holidays • Maintaining employee s

Part-time workers and their annual leave

No employer may reduce the annual leave of a part-time employee or change the way in which the indemnity pertaining to it is computed, in comparison with what is granted to other employees performing the same tasks in the same establishment for the sole reason that the employee usually works fewer hours each week.

Employees earning more than twice the minimum wage are excluded from this provision.

Going on leave

- The annual leave must be taken in the 12 months following the reference year. However, an employee may ask his employer to allow him to take his annual leave, in whole or in part, during the reference year.

If, at the end of the 12 months that follow the end of a reference year, the employee is absent owing to sickness, accident or a criminal offence, or is absent or on leave for maternity or parental matters, the employer may, at the employee's request, defer the annual leave to the following year. If the annual leave is not deferred, the employer must pay the annual leave indemnity to the employee who is entitled thereto.

- The employer has the privilege of setting the date of the leave.
- The employee must be informed of the date of his leave at least four weeks beforehand.
- The annual leave may not be replaced by a compensatory leave, except in the following cases:
 - when a collective agreement or a decree provides for a specific provision to that effect;
 - when the establishment closes down for two weeks at the time of the annual leave and an employee asks that his third week of leave be replaced by such an indemnity.

Division of the annual leave

The annual leave may be divided into two periods if the employee so requests. However, the employer may deny this request if he closes his undertaking for a period equal to or greater than that of the employee's annual leave.

An employer who, prior to March 29, 1995, closed his undertaking during the annual leave, may divide the annual leave of an employee who is entitled to three weeks of leave into two periods, one of which corresponds to this closure period. However, one of these two periods must be of a minimum duration of two uninterrupted weeks.

The annual leave may also be divided into more than two periods at the employee's request if the employer consents thereto. An annual leave that lasts one week or less may not be divided. A special provision of a collective agreement or a decree may provide for the division of the annual leave into two periods or more, or prohibit such division.

Absence by the employee

Should an employee be absent owing to sickness, accident or on maternity or paternity leave during the reference year and should that absence result in the reduction of that employee's annual leave indemnity, the employee is then entitled to an indemnity equal to twice or three times the weekly average of the wage earned during the period of work, according to the length of uninterrupted service. If the annual leave is less than two weeks, the employee is entitled to that amount in proportion to the days of leave that he has accumulated.

Example of how to calculate the annual leave indemnity in the event of absence for maternity leave or parental leave*

Ann worked 20 weeks during the reference year and took 18 weeks of maternity leave and 14 weeks of parental leave. She earned an average of \$340 per week and was entitled to two weeks of annual leave. How is her indemnity calculated?

Calculation method

FORMULA	Ann's indemnity
Average weekly wage	\$340
X 2 or 3 times the average weekly wage earned (depending on the uninterrupted service)	X 2
=	=
	\$680
X total (weeks worked + maternity leave)	(20 weeks worked + 18 weeks of maternity leave) X 38
=	=
	\$25,840
÷ number of weeks in the year	÷ 52
=	=
Annual leave indemnity	\$496.92

In this case, to calculate the indemnity, it is necessary to take into account the number of weeks worked and the number of weeks of maternity leave; without taking into account the weeks of absence for parental leave as the Act does not provide for this.

* The calculation formulas are given for information purposes. For more details, please refer to the Act respecting labour standards and its regulations or get in touch with the Service des renseignements.

Contract of employment cancelled

When a contract of employment is cancelled, the employer must pay the employee the indemnity for the annual leave that he did not take, as well as an indemnity equal to 4% or 6% of the gross wages of the current reference year, according to the length of uninterrupted service.



Paid statutory holidays

The following days are statutory general holidays:

- January 1st;
- Good Friday or Easter Monday, at the option of the employer;
- the Monday preceding May 25th;
- July 1st or, if this date falls on a Sunday, July 2nd;
- the first Monday in September;
- the second Monday in October;
- December 25th.

An employee in the clothing industry is also entitled to the following paid statutory holidays: January 2nd, Good Friday and Easter Monday.

Who is entitled to these statutory holidays?

Employees subject to the Act respecting labour standards are entitled to an indemnity for each statutory holiday stipulated in the Act, provided that they were not absent from work, without their employer's authorization or without valid reason, on the working day preceding or the working day following this holiday. The working day preceding or following the statutory holiday is the working day for the employee.

The provisions respecting statutory holidays do not apply to an employee who benefits, under a collective agreement or a decree, from at least seven paid statutory holidays in addition to the National Holiday. Nor do these provisions apply to an employee of the same undertaking who benefits from a number of days of leave at least equal to that stipulated in this agreement or decree (without necessarily being subject thereto).

Indemnity and compensatory holiday

The indemnity that an employer must pay an employee for a paid statutory holiday is equal to 1/20 of the wages earned during the four complete weeks of pay preceding the week of the holiday, excluding overtime. In the case of an employee receiving tips, the amount of the reported or attributed tips must be taken into account in the calculation of the indemnity.

The indemnity of an employee remunerated in whole or in part on commission is equal to 1/60 of the wages earned during the twelve complete weeks of pay preceding the week of the holiday.

An employee who works on a statutory holiday must receive, in addition to his usual wages, a compensatory indemnity or a paid compensatory holiday of one day. This compensatory holiday must be taken in the three weeks preceding or following the statutory holiday.

If the employee is on annual leave, the employer must pay him the compensatory indemnity or grant him a paid compensatory holiday of one day on a date agreed upon between them.

Example 1: employee paid by the week*

Calculation of the Christmas and New Year's Day indemnity

Paul works 8 hours a day, from Monday to Friday, and he earns \$10 per hour. He did not work on Christmas Day or New Year's Day. His employer's pay period is established from Saturday to Friday. How is the indemnity determined?

NOVEMBER							DECEMBER						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
						22		1	2	3	4	5	6
23	24	25	26	27	28	29	7	8	9	10	11	12	13
30							14	15	16	17	18	19	20
							21	22	23	24	25	26	27
							28	29	30	31			

JANUARY						
S	M	T	W	T	F	S
				1	2	3

■ = Holiday

- 1) Determine the Christmas indemnity. It is calculated on the basis of the four complete weeks of pay preceding the holiday, namely from November 22nd to December 19th.

$$\begin{aligned}
 &5 \text{ days worked per week} \times 8 \text{ hours per day} = && \mathbf{40 \text{ hours}} \\
 &40 \text{ hours} \times \$10 = && \mathbf{\$400} \\
 &\$400 \times 4 \text{ complete weeks of pay} = && \mathbf{\$1,600} \\
 &\$1,600 \text{ (wages earned)} \times 1/20 = && \mathbf{\$80}
 \end{aligned}$$

- 2) Calculate the wages for the week of the Christmas holiday, namely from December 20th to 26th.

$$\begin{aligned}
 &4 \text{ days worked in the week} \times 8 \text{ hours} = && \mathbf{32 \text{ hours}} \\
 &32 \text{ hours} \times \$10 = && \mathbf{\$320} \\
 &\$320 + \$80 \text{ (Christmas Day indemnity)} = && \mathbf{\$400}
 \end{aligned}$$

- 3) Determine the New Year's Day indemnity. It is calculated on the basis of the four complete weeks of pay preceding the holiday, namely from November 29th to December 26th, including the December 25th indemnity.

$$\begin{aligned}
 &5 \text{ days worked in the week} \times 8 \text{ hours per day} = && \mathbf{40 \text{ hours}} \\
 &40 \text{ hours} \times \$10 = && \mathbf{\$400} \\
 &\$400 \times 3 \text{ complete weeks of pay} = && \mathbf{\$1,200} \\
 &\$1,200 + \$400 \text{ (wages of December 20th to 26th} \\
 &\text{including the indemnity of December 25th)} = && \mathbf{\$1,600} \\
 &\$1,600 \text{ (wages earned)} \times 1/20 = && \mathbf{\$80}
 \end{aligned}$$

- 4) Calculate the wages for the week of December 27th to January 2nd.

$$\begin{aligned}
 &4 \text{ days worked in the week} \times 8 \text{ hours} = && \mathbf{32 \text{ hours}} \\
 &32 \text{ hours} \times \$10 = && \mathbf{\$320} \\
 &\$320 + \$80 \text{ (New Year's Day indemnity)} = && \mathbf{\$400}
 \end{aligned}$$

* The calculation formulas are given for information purposes. For more details, please refer to the Act respecting labour standards and its regulations or get in touch with the Service des renseignements.

LABOUR STANDARDS

Example 2: employee paid every two weeks*

Calculation of the indemnity for the statutory holiday of the Monday preceding May 25th, National Patriots' Day

Nathalie earns \$9.00 per hour. She always works 20 hours per week by reason of 5 hours per day, from Tuesday to Friday. The employer's pay period runs from Saturday to Friday. Pays are issued on Friday, every two weeks. Nathalie received her pay on April 25th and May 9th. What will be the amount of her pay of May 23rd, which must include the statutory holiday indemnity?

APRIL							MAY						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
		1	2	3	4	5					1	2	3
6	7	8	9	10	11	12	4	5	6	7	8	9	10
13	14	15	16	17	18	19	11	12	13	14	15	16	17
20	21	22	23	24	25	26	18	19	20	21	22	23	24
27	28	29	30				25	26	27	28	29	30	31

■ = Pay day

■ = Holiday

When the employee is remunerated every two weeks and the pay period overlaps the week of the statutory holiday, the pay periods must be divided by week for the calculation of the indemnity.

- 1) Determine the four complete weeks of pay preceding the week of the holiday

The period to be considered for the calculation of the indemnity is from Saturday, April 19th, to Friday, May 16th.

Pay periods:

April 12 to 25	Week 1: 20 hr X \$9 = \$180
	*Week 2: 20 hr X \$9 = \$180
April 26 to May 9	*Week 1: 20 hr X \$9 = \$180
	*Week 2: 20 hr X \$9 = \$180
May 10 to 23	*Week 1: 20 hr X \$9 = \$180
	Week 2: 20 hr X \$9 = \$180

* The weeks to be considered for the calculation of the indemnity are preceded by an asterisk.

- 2) Calculate the number of hours worked during these four weeks
20 hr X 4 weeks = 80 hr

- 3) Calculate the wages earned during this period

Number of hours worked during this period	80 hr
X hourly wage	X \$9
=	= \$720
x 1/20 of the wages earned during this period	x 1/20
= Statutory holiday indemnity	= \$36

For her May 23rd pay, Nathalie will have to receive \$396 which represents her regular wages for the two weeks worked (\$180 X 2 = \$360) to which the \$36 statutory holiday indemnity has been added.

National Holiday

June 24th, the National Holiday, is a paid statutory holiday. When June 24th falls on a Sunday, the leave is postponed to June 25th only for those employees who do not ordinarily work on Sunday.

Indemnity and compensatory holiday

The National Holiday indemnity is calculated in the same way as that of the other statutory holidays.

Employee who works

June 24th is a statutory holiday. However, if due to the nature of the activities of the enterprise work cannot be interrupted on that day (e.g. hotel, restaurant, etc.), the employee is entitled to his regular wages and to the indemnity or compensatory holiday on the working day preceding or following June 24th.

Employee on a day off (non-working day)

When June 24th falls on a day when an employee does not normally work, the employer shall grant him a compensatory holiday on the working day preceding or following June 24th or pay him the compensatory indemnity.

Employee on annual leave

When an employee is on annual leave at the time of the National Holiday, the employer shall grant him a compensatory holiday at a date agreed upon by them or pay him the compensatory indemnity.





Absences owing to sickness, accident or a criminal offence

An employee credited with three months of uninterrupted service may be absent from work:

<ul style="list-style-type: none"> owing to sickness or accident 	<p>For not more than 26 weeks over a 12-month period, without pay</p>
<ul style="list-style-type: none"> if he suffered serious injury during or from a criminal offence rendering him unable to hold his regular position if he suffered injury while lawfully attempting to arrest an offender or while assisting a peace officer making an arrest if he suffered injury while lawfully preventing or attempting to prevent the commission of an offence or while assisting a peace officer 	<p>For not more than 104 weeks*, without pay</p> <p>(The period of absence begins not earlier than the day on which the criminal offence was committed or at the end of the 26-week period if the employee was absent owing to sickness or accident. It shall end not later than 104 weeks after the criminal offence was committed.)</p> <p>* The employee is not entitled to these absences if the circumstances show that he took part in the criminal offence and in those cases where the employee suffered an employment injury within the meaning of the Act respecting industrial accidents and occupational diseases.</p>

The employee must advise his employer as soon as possible of his absence, giving the reasons for it. The employer may request that the employee furnish a document attesting to those reasons, if it is warranted by the duration of the absence or its repetitive nature.

The employee's participation in the group insurance and pension plans recognized in his place of employment shall not be affected, subject to regular payment of the contributions payable under these plans and for which the employer assumes his usual part.

Return to work

If the employer consents thereto, the employee may return to work on a part-time basis or intermittently during the period of absence that he has been granted because he suffered a serious injury following a criminal offence.

At the end of the period of absence, the employee must be reinstated in his former position, with the same benefits, including the wages to which the employee would have been entitled had he remained at work. If the position held by the employee no longer exists when he returns to work, the employer shall recognize all the rights and privileges to which the employee would have been entitled at the time the position ceased to exist.

This right does not affect the possibility for the employer to dismiss, suspend or transfer an employee if, in the circumstances, the consequences of the sickness, the accident or the criminal offence or the repetitive nature of the absences constitute good and sufficient cause.

Finally, at the time of a dismissal or layoff that would have included the employee had he remained at work, the employee retains the same rights as the other employees actually dismissed or laid off with respect notably to return to work.



LABOUR STANDARDS

status • Break period • Gratuities and t
 maintaining employee status • Break perio
 • **Maintaining employee status** •
 ness • Family absences • Paid statutor
 ces owing to sickness • Family absence

Absences and leaves for family or parental matters

The Act respecting labour standards grants employees a number of leaves, which may or may not be paid by the employer, as the case may be, for events related to the employee's family. The employee must inform his employer of his absence.

Adoption	of a child	5 days of absence
Birth	of his child	(including 2 paid if the employee has been with his employer for at least 60 days)
Termination	of pregnancy beginning from the 20th week of pregnancy	This leave may be divided into days at the request of the employee. It may not be taken once 15 days have expired since the child's arrival at the home of his father or mother or, where applicable, the termination of pregnancy.
Death or funeral	of his spouse, of his child, of the child of his spouse, of his father, of his mother, of his brother, of his sister	1 day with pay and 4 days without pay
Death or funeral	of a son-in-law, of a daughter-in-law, of grandparents, of grandchildren, as well as of the father, the mother, the brother or the sister of his spouse	1 day without pay
Wedding or civil union	of the employee	1 day with pay
Wedding or civil union	of the employee's child, of his father, of his mother, of a brother, of a sister, of the child of his spouse	1 day without pay
Obligations	<ul style="list-style-type: none"> related to the custody, health or education of a child of the employee or of a child of his spouse related to the state of health of the spouse of the employee, his father, his mother, a brother, a sister or one of his grandparents 	10 days per year without pay This leave may be divided into days taken at various times of the year. A day may also be divided (into half-days for example) if the employer consents thereto.
Presence required	with the child of the employee, his spouse, the child of his spouse, his father, his mother, the spouse of his father or mother, his brother, his sister or one of his grandparents due to a serious illness or a serious accident	Not more than 12 weeks* during a 12-month period (the employee must have been with the employer for at least three months) * The absence may be extended if a minor child of the employee has a serious and potentially mortal illness. It shall end not later than 104 weeks after the start of the absence.



However, at the time of the death or funeral of a member of the family of an employee in the clothing industry, the employee is entitled to a different number of days of absence.

Death or funeral	of his spouse, his child, the child of his spouse, his father, mother, brother, sister	3 days in a row with pay and 2 days without pay
Death or funeral	of his grandparents, as well as the father or mother of the employee's spouse	1 day with pay
Death or funeral	of his son-in-law, daughter-in-law, grandchild as well as a brother or sister of his spouse	1 day without pay

The Act also provides for leaves following a criminal offence or a suicide, a maternity leave for a pregnant employee (not more than 18 uninterrupted weeks, without pay), absences for examinations related to her pregnancy, a paternity leave for the father (5 uninterrupted weeks, without pay), and a parental leave for the father and mother of a newborn as well as for a person who adopts a child (52 weeks, without pay).

Leaves following a criminal offence or a suicide

The Act respecting labour standards grants the employee absences following tragic events.

Employee's presence required	<ul style="list-style-type: none"> with his minor child who suffered serious injury following a criminal offence rendering him unable to carry on regular activities with his minor child if he suffered serious injury while lawfully attempting to arrest an offender or while assisting a peace officer making an arrest with his minor child if he suffered serious injury while lawfully preventing or attempting to prevent the commission of an offence or while he was assisting a peace officer 	For not more than 104 weeks, without pay
Disappearance	of the employee's minor child	For not more than 52 weeks, without pay <ul style="list-style-type: none"> If the child is found before the end of this time period, the absence shall end on the eleventh day that follows.
Death resulting from the suicide	of his child or his spouse	For not more than 52 weeks, without pay
Death resulting from a criminal offence	of his child or his spouse	For not more than 104 weeks, without pay
Death	of his child or his spouse while attempting to arrest an offender or while assisting a peace officer making an arrest	
Death	of his child or his spouse while lawfully preventing or attempting to prevent the commission of an offence or while assisting a peace officer	

LABOUR STANDARDS

• Special clothing • Absences owing to
ly vacation • **Special clothing** • Absen
work • Early vacation • Special clothing
• Refusal to work • Early vacation • Sp
ties and tips • **Refusal to work** • Ea

To be able to benefit by these leaves, the employee must have worked for the employer for at least three months and show that the serious bodily injury or the death resulted from a criminal offence or that the person who has disappeared is in danger. Moreover, the employee is not entitled to these leaves if the circumstances show that the employee or the deceased person (spouse or child of full age) participated in the criminal offence. The employee must advise his employer as soon as possible of his absence and the reasons for it.

The period of absence begins not later than the date on which the criminal offence having caused the serious bodily injury was committed or the date of the disappearance and shall end not later, as the case may be, than 52 or 104 weeks after that date. If, during this period of absence, a new event occurs concerning the same child and if it gives entitlement to a new period of absence, it is the longer period that shall apply, starting from the date of the first event. The employer may request that the employee furnish a document attesting to those reasons, if it is warranted by the duration of the absence or its repetitive nature.

The employee's participation in the group insurance and pension plans recognized in his place of employment shall not be affected, subject to regular payment of the contributions payable under these plans and for which the employer assumes his usual part.

Return to work

If the employer consents thereto, the employee may resume work on a part-time or intermittent basis during the period of absence that he has been granted.

At the end of the period of absence, the employee must be reinstated in his former position, with the same benefits, including the wages to which the employee would have been entitled had he remained at work. If the position held by the employee no longer exists when he returns to work, the employer shall recognize all the rights and privileges to which the employee would have been entitled at the time the position ceased to exist.

This right does not affect the possibility for the employer to dismiss, suspend or transfer an employee if, in the circumstances, the consequences of the sickness, the accident or the criminal offence or the repetitive nature of the absences constitute good and sufficient cause.

Finally, at the time of a dismissal or layoff that would have included the employee had he remained at work, the employee retains the same rights as the other employees actually dismissed or laid off with respect notably to return to work.

Maternity leave

Generally, Québec workers are entitled to the maternity leave provided for under the Act respecting labour standards.

Leave period

A pregnant employee is entitled to a maternity leave without pay of not more than 18 consecutive weeks. If the employee requests it, the employer may grant a maternity leave for a longer period.

The maternity leave may be taken as the employee chooses, before or after the anticipated date of delivery. If the delivery occurs after the anticipated date, the employee is entitled to at least two weeks of maternity leave after the delivery.

The maternity leave may not begin before the 16th week preceding the anticipated date of delivery and shall end not later than 18 weeks after the week of delivery.

Beginning the 6th week before delivery, the employer may require in writing a medical certificate attesting that the employee is fit to work. If she does not provide this certificate within eight days, the employer may, by written notice, require that she take her maternity leave.

If the employee returns to work in the two weeks following delivery, the employer may require a medical certificate attesting that she is able to work.

There are also provisions that stipulate that the employee may be absent in certain cases, in particular:

- 1 where there is a danger of termination of pregnancy or a danger for the health of the mother or the unborn child resulting from the pregnancy;
- 2 when a termination of pregnancy occurs before the 20th week preceding the anticipated date of delivery;
- 3 when a termination of pregnancy occurs beginning from the 20th week of pregnancy;
- 4 when the mother's or the child's state of health so requires.

Notice

An employee must give her employer a written notice mentioning the date she will go on maternity leave and the date she will return to work, three weeks before leaving, or less if her state of health requires that she leave sooner.

The notice must always be accompanied with a medical certificate attesting to the pregnancy and the anticipated date of delivery. The medical certificate may be replaced by a written report signed by a midwife.



Return to work

At the end of the maternity leave, the employer must reinstate the employee in her regular position and give her the same wages and benefits that she would have enjoyed, had she remained at work.

If her regular position no longer exists when the employee returns to work, the employer must grant her all of the rights and privileges that she would have enjoyed had she been at work when her position disappeared.

These provisions must not however give the employee a benefit that she would not have enjoyed had she remained at work. Moreover, the employee's participation in the group insurance and pension plans must not be affected by her absence subject to the regular payment by the employee of the contributions payable under those plans, and the usual part of which is paid by the employer.

Annual leave

An absence for maternity leave during the reference year does not reduce the annual leave of an employee. She is entitled to an indemnity equal to two or three times the average weekly wages earned during the period worked, according to the length of uninterrupted service.

Pregnancy-related examinations

An employee may be absent from work without pay for pregnancy-related examinations. She must notify her employer as soon as possible.

Re-assignment

The provisions concerning re-assignment are provided for under the Act respecting Occupational Health and Safety. To obtain further information, contact the office of the Commission de la santé et de la sécurité du travail of your region.

Québec Parental Insurance Plan

There is a plan that grants an allowance to support the income of a female worker who must be absent from work by reason of maternity. To find out more, get in touch with an officer of the Customer Service Centre at the ministère de l'Emploi et de la Solidarité sociale at 1 888 610-7727. It is also possible to apply for benefits over the Internet: www.rqap.gouv.qc.ca.

Paternity leave

An employee is entitled to a paternity leave of not more than five uninterrupted weeks, without pay, at the time of the birth of his child.

The paternity leave can be taken at any time, but it cannot begin before the week in which the child is born and must end not later than 52 weeks after the child's birth.

Québec Parental Insurance Plan

There is a plan that grants an allowance to support the income of an employee who is absent from work by reason of paternity. To find out more, get in touch with an officer of the Customer Service Centre at the ministère de l'Emploi et de la Solidarité sociale at 1 888 610-7727. It is also possible to apply for benefits over the Internet: www.rqap.gouv.qc.ca.

Parental leave

The father and the mother of a newborn and the person who adopts a child are entitled to a parental leave, without pay, of not more than 52 weeks. The person who adopts the child of his spouse is also entitled to this leave.

The parental leave is in addition to the maternity leave lasting a maximum of 18 weeks and the paternity leave lasting five weeks. The parental leave can be paid according to the terms and conditions of the Québec Parental Insurance Plan and can be shared between the father and the mother.

The parental leave may not begin before the week of the birth of the newborn or the week when the child is entrusted to the employee in the case of an adoption. It may also begin the week when the employee leaves work to travel outside Québec in order for the child to be entrusted to him. The parental leave shall end not later than 70 weeks after the birth or, in the case of adoption, 70 weeks after the child has been entrusted to the employee.

The parental leave may be taken after a notice of at least three weeks, indicating the date the employee will begin his leave and the date he will return to work, has been given to the employer. This notice may be shorter if the employee's presence is required with the newborn or newly adopted child or, where applicable, with the mother, due to their state of health. Moreover, if the employer consents thereto, the employee may return to work on a part-time basis or intermittently during his parental leave.

At the end of the parental leave, the employer must reinstate the employee in his regular position with the same benefits, including the wages to which he would have been entitled had he remained at work. If the position has been abolished, the employee retains the same rights and privileges that he would have enjoyed had he remained at work.

These provisions must not give an employee a benefit that he would not have enjoyed had he remained at work. Moreover, the employee's participation in the group insurance and pension plans must not be affected by his absence subject to the regular payment by the employee of the contributions payable under those plans, and the usual part of which is paid by the employer.

LABOUR STANDARDS

gratuities and tips • Refusal to work
 • Break period • Gratuities and tips •
 Employee status • Break period • Gratuitie
 s • Maintaining employee status • Brea
 holidays • Maintaining employee s

Notice of termination of employment

The employer must give written notice to an employee before terminating his contract of employment or laying him off for six months or more. In the case of a contract for a fixed term which expires or for a specific undertaking, the employer is not required to give this notice.

Who is entitled to this notice?

Québec employees subject to the Act respecting labour standards are entitled to a written notice of termination of employment or of layoff for six months or more.

Some employees subject to the Act respecting labour standards are however excluded from the application of the provisions related to the notice of termination of employment or the notice of layoff for six months or more. They are:

- an employee who has less than three months of uninterrupted service;
- an employee who has committed a serious fault;
- an employee laid off due to a case of superior force (e.g.: fire);
- an employee whose contract of a set length expires;
- an employee hired to carry out a specific task upon completion of which his contract is considered terminated.

The length of the notice varies according to the length of uninterrupted service.

Uninterrupted service	Length of the notice
3 months to 1 year	1 week
1 year to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years and over	8 weeks

Indemnity

An employer who does not give this notice to an employee must pay him a compensatory indemnity equal to his regular wage excluding overtime for a period equal to that of the notice to which he was entitled.

Example of how to calculate the indemnity of an employee whose work schedule is variable*

Peter is credited with seven years of uninterrupted service. His work schedule varies from week to week and he receives \$9.00 an hour. The employer is closing his enterprise and wants to pay Peter a compensatory indemnity. How is this indemnity calculated?

Peter is entitled to four weeks' notice as he is credited with between five and ten years of uninterrupted service. It is necessary to determine his usual wages and to calculate the indemnity to which he is entitled. During the four weeks preceding his layoff, Peter worked 48 hours, 39 hours, 41 hours and 40 hours respectively. This number of hours worked during the last four weeks is representative of the number of hours that Peter usually works.

Calculation method

FORMULA	Peter's indemnity
1st week 48 hours: 40 hours X \$9 (without taking into account overtime)	\$360
2nd week 39 hours X \$9	+ \$351
3rd week 41 hours: 40 hours X \$9	+ \$360
4th week 40 hours X \$9	+ \$360
=	=
Wages of the 4 weeks preceding the notice of termination of employment without taking into account overtime	\$1,431
÷ number of weeks	÷ 4
=	=
Average usual wage	\$357.75
X number of weeks equivalent to the length of the notice depending on the length of uninterrupted service	X 4
=	=
Compensatory indemnity	\$1,431

* The calculation formulas are given for information purposes. For more details, please refer to the Act respecting labour standards and its regulations or get in touch with the Service des renseignements.

Specific provisions

The indemnity of an employee remunerated in whole or in part on commission is determined on the basis of his average weekly wages during the complete periods of pay in the three months preceding his termination of employment or his layoff for six months or more.

A notice of termination of employment given to an employee during the period when he is laid off is null, except in the case of employment that usually lasts for not more than six months each year due to the influence of the seasons.



Generally, an employee who is laid off for six months or more and who is entitled to recall rights for a period of more than six months under a collective agreement may demand payment of the indemnity if he failed to receive the notice of layoff, under the following conditions and at the first of the following dates:

- 1 when his recall right expires, if he is not recalled to work or
- 2 one year after the layoff.

Example of how to calculate the indemnity of an employee remunerated in whole or in part on commission*

Frank is credited with 11 years of uninterrupted service. He receives \$150 in basic wages per week plus commissions. He is paid on a weekly basis. The employer decides to lay him off permanently and wants to pay him a compensatory leave rather than give him a notice of termination of employment. How is the indemnity calculated?

Frank is entitled to eight weeks' notice as he is credited with over ten years of uninterrupted service. It is necessary to take into account his average weekly wage during the complete periods of pay included in the three months preceding his layoff.

Calculation method

FORMULA	Frank's indemnity
Number of weeks worked during the three months preceding the layoff X basic wage	12 X \$150
=	=
	\$1,800
+ commissions received during the three months	+ \$4,000
=	=
Wages received during the three months	\$5,800
÷ number of weeks worked during the three months	÷ 12
=	=
Average usual wage	\$483.33
X number of weeks equivalent to the length of the notice according to the length of uninterrupted service	X 8
=	=
Compensatory indemnity	\$3,866.64

* The calculation formulas are given for information purposes. For more details, please refer to the Act respecting labour standards and its regulations or get in touch with the Service des renseignements.

Reasonable notice of termination under the Civil Code

The Civil Code stipulates that an employee can claim reasonable notice of termination or, as the case may be, compensation in lieu thereof, if he believes that he is entitled thereto. This recourse may be exercised personally by the employee or with the assistance of the lawyer of his choice. The employee will then have to assume the costs involved.

The employee is also required to give his employer reasonable notice before quitting his job.

Notice of collective dismissal

A collective dismissal occurs when an employer terminates the employment of ten employees or more in the same establishment in the course of two consecutive months. In addition, the layoff, for a period of six months or more, of not fewer than ten employees also constitutes a collective dismissal.

Several provisions concern the notice of collective dismissal. To find out more, get in touch with the Service des renseignements at the Commission des normes du travail.

Retention of the status of employee

An employee is entitled to retain the status of employee where the changes made by his employer to the mode of operation of his enterprise do not change the employee's status into that of contractor without employee status.

If the employee is in disagreement with the employer regarding the consequences of these changes on his status of employee, he may file a complaint in writing with the Commission des normes du travail. To find out more, get in touch with the Service des renseignements at the Commission des normes du travail.

Pecuniary complaints

If an employee believes that his employer has not respected his rights regarding the labour standards provided for in the Act (for example, for the payment of wages, overtime, the annual leave indemnity, the indemnity for termination of employment or for an inaccurate calculation of the statutory holiday indemnity), the employee has one year to file a complaint with the Commission des normes du travail.

How to file a complaint

An employee can file his complaint by telephone by contacting the Commission's Service des renseignements or by Internet by using the on-line directed path complaint filing service.

After filing the complaint

The Commission does not disclose the identity of the complainant during the inquiry, unless the latter consents thereto.

The Commission may refuse to proceed with an inquiry if it finds that the complaint is frivolous, made in bad faith or is unfounded. It notifies the complainant thereof by registered or certified mail and gives him the reasons for its decision. However, the employee may ask for a review of the decision by making a written application to the Director of the Commission's Direction générale des affaires juridiques in the 30 days that follow.

RECOURSES

If the Commission is of the opinion that an amount of money is owing to the employee, it may take the appropriate steps to claim this sum. In this case, the employee has no fees to pay.

Prohibited practices

Any employee may file a complaint before the Commission des normes du travail if he believes that he was dismissed, suspended, transferred, the victim of discriminatory measures, reprisals or any other sanction for one of the following reasons:

- 1 because he exercised a right ensuing from the Act respecting labour standards and its regulations (for example, following a claim for unpaid wages);
- 2 because an inquiry is being made by the Commission in one of the establishments of his employer;
- 3 because he has given information to the Commission on the application of the labour standards or he has given evidence in a proceeding related thereto;
- 4 because his wages have been seized (seizure by garnishment) or may be seized;
- 5 because he is a debtor of support subject to the Act to facilitate the payment of support;
- 6 because the employee is pregnant;
- 7 because the employer wants to evade the application of the Act respecting labour standards or its regulations;
- 8 because the employee has refused to work beyond his regular hours of work when he was required to fulfil obligations relating to the care, health or education of his child or the child of his spouse or due to the state of health of his spouse, his father, his mother, a brother, a sister or one of his grandparents, even though he had taken all reasonable steps within his power to assume those obligations otherwise;
- 9 because he has reached or passed the age or the number of years of service at which he is entitled to retire.

The time period for filing a complaint is 45 days from the date of dismissal or of the measure taken against the employee. However, in the case of retirement, the time period is 90 days from the dismissal or the measure taken against the employee.

How to file a complaint

An employee can file his complaint by telephone by contacting the Commission's Service des renseignements or by Internet by using the on-line directed path complaint filing service. A complaint filed with the Commission des relations du travail is also admissible.

After filing the complaint

The Commission des normes du travail first makes sure that the complaint is receivable. If the complaint is considered non-receivable, the Commission notifies the employee in writing that it is putting an end to the intervention and gives the reasons for this decision. The employee may however request, in writing, a review of this decision with the Director of the Direction générale des affaires juridiques of the Commission in the 30 days that follow.

If the complaint is considered receivable, the Commission shall notify the employee that it will follow up on the complaint as soon as possible. The Commission shall also inform the employer that a complaint against a prohibited practice has been filed and shall designate a person who will offer both parties the mediation service.

Before the Commission des relations du travail

If no agreement is reached, the Commission des normes du travail sends the complaint to the Commission des relations du travail and also sends the file to the Direction générale des affaires juridiques to offer the employee the possibility of being represented free of charge before the Commission des relations du travail, where applicable.

Indeed, the Commission des normes du travail offers the employee the services of one of its lawyers free of charge, except if the employee is a member of a group of unionized employees certified pursuant to the Labour Code or if he prefers to use the services of his own lawyer. The lawyer who is designated to represent the employee will contact him.

A hearing before the Commission des relations du travail resembles a court hearing. For example, the employee is asked to give his version of the facts. He may also have witnesses testify. The employer enjoys the same rights.

The employee benefits from a presumption before the Commission des relations du travail to the effect that he was the victim of a prohibited practice. It is up to the employer to prove this presumption wrong.

This presumption continues to apply for not less than 20 weeks after the employee has returned to work at the end of a maternity leave or a parental leave.



The Commission des relations du travail makes its decision

The Commission des relations du travail can accept or reject the employee's complaint. If the Commission des relations du travail concludes that there was a prohibited practice, it may:

- 1 order the employer to reinstate the employee in the job that he held prior to the measure that was taken by the employer and to pay the employee, as an indemnity, the equivalent of the wages and other benefits of which the employee was deprived by the dismissal, suspension or transfer;
- 2 order the employer to cancel a sanction or to cease exercising discriminatory measures or reprisals and to pay an indemnity to the employee, where applicable.

However, if the employee works as a domestic, the Commission des relations du travail may only order the employer to pay the employee an indemnity corresponding to the wages and other benefits of which he was deprived due to his dismissal.

The services of the Commission des relations du travail are free of charge.

Dismissal not made for good and sufficient cause

An employee who believes that he was dismissed without good and sufficient cause can file a complaint before the Commission des normes du travail in the 45 days following his dismissal:

- 1 if he is credited with at least two years of uninterrupted service in the same undertaking;
- 2 if no other remedial procedure, other than a recourse in damages, is provided for in the Act respecting labour standards, in another act or in an agreement.

How to file a complaint

An employee can file his complaint by telephone by contacting the Commission's Service des renseignements or by Internet by using the on-line directed path complaint filing service. A complaint filed with the Commission des relations du travail is also admissible.

After filing the complaint

The Commission first of all determines if the complaint is receivable. If the complaint is deemed not receivable, the Commission notifies the employee in writing that it is ending its intervention and informs the employee of the reasons for its decision. However, the employee may request a review of this decision by making a written application to the Director of the Commission's Direction générale des affaires juridiques in the 30 days that follow.

If the complaint is deemed receivable, the Commission notifies the employee that it will follow up on the complaint as soon as possible. The Commission also informs the employer that a complaint against a dismissal has been filed and designates a person who will offer both parties its mediation service. It may also require from the employer a writing containing the reasons for the dismissal.

Before the Commission des relations du travail

If no agreement is reached, the Commission des normes du travail refers the complaint to the Commission des relations du travail and also sends the file to the Direction générale des affaires juridiques to offer the employee the opportunity of being represented before the Commission des relations du travail, where applicable.

Indeed, the Commission offers the employee the services of one of its lawyers free of charge, except if the employee is a member of a group of unionized employees certified pursuant to the Labour Code or if he prefers to use the services of his own lawyer. The lawyer who is designated to represent the employee will contact the latter.

A hearing before the Commission des relations du travail resembles a court hearing. For example, the employee is asked to give his version of the facts. He may also have witnesses testify. The employer enjoys the same rights.

The Commission des relations du travail makes its decision

The Commission des relations du travail can accept or reject the employee's complaint. If the Commission des relations du travail concludes that there was a dismissal not made for good and sufficient cause, it may:

- 1 order the employer to reinstate the employee in the job that he held prior to his dismissal;
- 2 order the employer to pay the employee the sums lost since his dismissal;
- 3 make any other decision that it deems fair and reasonable.

However, if the employee works as a domestic, the Commission des relations du travail may only order the employer to pay the employee an indemnity corresponding to the wages and other benefits of which he was deprived due to his dismissal.

RECOURSES

status • Break period • Gratuities and t
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 ces owing to sickness • Family absence

Psychological harassment

Since June 1, 2004, every employee has been entitled to a workplace free from psychological harassment.

Psychological harassment means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures. This vexatious behaviour affects an employee's dignity or psychological or physical integrity. It results in a harmful work environment for the employee. A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

Regardless of the employee's hierarchical level in the undertaking, he can benefit from a recourse in the event of psychological harassment. However, the place designated for exercising his recourse varies according to whether he comes from the public or private sector and according to whether he is a unionized or non-unionized employee.

Non-unionized employee subject to the Act respecting labour standards, including senior managerial personnel	COMMISSION DES NORMES DU TRAVAIL Service des renseignements Montréal area 514 873-7061 Elsewhere in Québec, toll-free 1 800 265-1414 Internet On-line services, on-line complaints: www.cnt.gouv.qc.ca
Unionized employee	Union to which the employee belongs
Employee of the public service not governed by a collective agreement, including the members and heads of agencies	COMMISSION DE LA FONCTION PUBLIQUE 418 643-1425 Elsewhere in Québec, toll-free 1 800 432-0432

A non-unionized employee subject to the Act respecting labour standards must file his complaint in the 90 days following the last manifestation of the psychological harassment.

Mediation

Mediation is a service which the Commission des normes du travail offers free of charge to an employee and an employer involved in a recourse against a practice prohibited under the Act respecting labour standards, a dismissal not made for good and sufficient cause or for a psychological harassment.

As soon as one of these complaints has been filed, the Commission can, with the agreement of the employee and the employer, begin mediation and try to help the parties find a satisfactory solution to their disagreement concerning the application of the Act.

Advantages

Mediation is an opportunity to establish, with the help of a mediator, a dialogue by which the employee and the employer can exchange their points of view on the matter opposing them and quickly find an area of agreement. Such a dialogue offers numerous advantages including:

- to actively look for a satisfactory solution to the conflict;
- to retain control over the decisions to be made;
- to save time and money and spare yourself aggravation;
- to reach an agreement that is freely consented to.

Mediation: it's confidential

The mediator appointed by the Commission des normes du travail is chosen from among the qualified staff of the regional office of the Commission where the complaint was filed. To guarantee the objectivity of mediation, this person may not act in any other capacity in this matter. Similarly, all of the verbal and written information that the employee and employer give the mediator remains strictly confidential, and no person may compel the mediator to divulge such information. These guarantees are given to the employee and employer by section 123.3 of the Act respecting labour standards.

If no agreement is reached, the Commission des normes du travail will transmit the complaint without delay to the Commission des relations du travail. The Commission des normes du travail offers the employee the opportunity to be represented free of charge by one of its lawyers.

And if the employer declares bankruptcy

The Commission can exercise recourses against the directors to collect the wages, indemnities for annual leave, statutory holidays, leaves for family matters as well as other sums that could be due pursuant to the Act respecting labour standards, but under certain conditions.

Find out more from the Service des renseignements at the Commission des normes du travail.



If you are not satisfied with our services

The Commission des normes du travail has made a public commitment regarding the nature, availability and quality of the services that you are entitled to receive from our staff.

Whether you are an employee or an employer, we undertake to:

- foster a relationship based on courtesy and attentiveness in all our exchanges;
- process your requests promptly and efficiently, taking into account your respective rights and obligations;
- provide clear and uniform information.

To find out more about our commitments to our clientele, request our Statement of services for the public from our Service des renseignements or consult our Web site.

Service des renseignements

514 873-7061

1 800 265-1414

www.cnt.gouv.qc.ca

Montréal area

Elsewhere in Québec, toll-free

Moreover, the Commission des normes du travail goes to great lengths to meet your needs. Certain situations may however give rise to dissatisfaction.

If you wish to express your dissatisfaction or have comments that you wish to make concerning the quality of our services, we invite you to submit your observations to the Service de la qualité.

Service de la qualité

Commission des normes du travail

Hall Est, 7^e étage

400, boulevard Jean-Lesage

Québec (Québec) G1K 8W1

418 525-2161

1 888 708-9188 (toll-free)

The Commission des normes du travail undertakes to contact you in the two working days following receipt of your letter or telephone call.



DEFINITIONS

A few definitions

In the Act respecting labour standards, the following terms have a precise meaning that is useful to know.

Dismissal

Dismissal consists of definitively interrupting the employment of an employee whose conduct is called into question by his employer. In certain cases, the non-renewal of a contract or the failure to recall the employee to work may constitute a dismissal.

Domestic

An employee in the employ of a natural person and whose main function is the performance of domestic duties in the dwelling of that person, including an employee whose main function is to take care of a child or a sick, handicapped or aged person and to perform domestic duties in the dwelling that are not directly related to the immediate needs of the person in question.

Employee

A person who works for an employer and who is entitled to a wage; this word also includes a worker who is a party to a contract, under which he:

- 1 undertakes to perform specified work for a person within the scope and in accordance with the methods and means determined by that person;
- 2 undertakes to furnish, for the carrying out of the contract, the material, equipment, raw materials or merchandise chosen by that person and to use them in the manner indicated by him;
- 3 keeps, as remuneration, the amount remaining to him from the sum he has received in conformity with the contract, after deducting the expenses entailed in the performance of that contract.

Employee in the clothing industry

An employee in the clothing industry who would be subject to one of the following decrees, had they not expired:

- 1 the Decree respecting the men's and boys' shirt industry;
- 2 the Decree respecting the women's clothing industry;
- 3 the Decree respecting the men's clothing industry;
- 4 the Decree respecting the leather glove industry.

• Special clothing • Absences owing to
ly vacation • **Special clothing** • Absen
work • Early vacation • Special clothing
• Refusal to work • Early vacation • Sp
ties and tips • **Refusal to work** • Ea

Permanent layoff

A permanent layoff consists of definitively interrupting the employment of an employee due to a change of an economic or technological nature in the enterprise.

Spouses

Persons who:

- a) are married or in a civil union and cohabiting;
- b) being of opposite sex or the same sex, are living together in a de facto union and are the father and mother of the same child;
- c) are of opposite sex or the same sex and have been living together in a de facto union for one year or more.

Suspension

A suspension generally consists of temporarily interrupting the employment of an employee for a definite period of time. It is a disciplinary measure. A suspension is always temporary and does not cancel the contract of employment.

Temporary layoff

A temporary layoff consists of temporarily interrupting the employment of an employee due to a change in the enterprise's manpower needs.

Transfer

The transfer of an employee corresponds to a change in his conditions of employment. For example, this may involve an assignment to another work station or another place of work, a reduction of the number of hours of work, etc. An exchange of posts or a demotion are in fact transfers.

Uninterrupted service

The uninterrupted period during which the employee is bound to the employer by a contract of employment, even if the performance of work has been interrupted without cancellation of the contract, and the period during which fixed term contracts succeed one another without an interruption that would, under the circumstances, give cause to conclude that the contract was not renewed.

Wages

A remuneration in currency and benefits having a pecuniary value due for the work or services performed by an employee.



Absences owing to sickness • Family absences • Paid statutory holidays • **Maintaining employee status** • Break period • Gratuities and tips • Refusal to work • Early vacation • Special clothing • Absences owing to sickness • Family absences • Paid statutory holidays • Maintaining employee status • Break period • Gratuities and tips • Refusal to work • Early vacation • Special clothing • Absences owing to sickness • Family absences • Paid statutory holidays • Maintaining employee status • **Break period** • Gratuities and tips • Refusal to work • Early vacation • Special clothing • Absences owing to sickness • Family absences • Paid statutory holidays • Maintaining employee status • Break period • Gratuities and tips • Refusal to work • Early vacation • **Special clothing** • Absences owing to sickness • Family absences • Paid statutory holidays • Maintaining employee status • Break period

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**Commission
des normes
du travail**

Québec 



The material found in this document is for information purposes only.
For more details, please refer to the Act respecting labour standards and
its regulations, or call the Service des renseignements.

The masculine form is used throughout this text.
No discrimination is intended.

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