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Employers: 6 main amendments to the Act respecting labour standards

November 22, 2018

On June 12, 2018, the Act respecting labour standards (the “Act”) was amended to give employees more flexibility in order to improve their family work balance. Here is an overview of the main changes made to the Act.

The reference guide specifies which amendments will be coming into force on January 1, 2019. All other amendments have been in force since June 12, 2018.

1 Differential treatment



Prohibition on differences in treatment based on employment status

Entry into force
January 1, 2019

For employees who perform the same tasks in the same establishment, the rate of wage, the length of vacation or the method of calculating the related indemnity cannot be different solely based on their differing employment status.

For example, a temporary employee and a regular employee performing the same tasks in the same establishment must be remunerated on the same wage rate.

Prohibition on differences in treatment based on hiring date

Improvement of the existing protection against differential conditions of employment based on the hiring date of employees who perform the same tasks in the same establishment.

Pension plans and other benefits plans have been added to the list of employment conditions that cannot be the object of differential treatment such as wage, hours of work and various leave entitlements provided for in the Act.
(Employers who implemented pension or benefits plans with differences in treatment based on the hiring date of the employees before June 12, 2018, will not be required to amend them..)

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An employee who believes he or she is a victim of differential treatment with respect to pension plans or other benefits plans may file a complaint with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) within 12 months of finding out this differential treatment.
(This amendment does not prohibit distinctions based on employment status. Two employees with different statuses may still be entitled to different benefits and pension plans, subject to possible recourses under the Charter of human rights and freedoms (e.g., discrimination based on age, social condition, etc.).

2 Working hours...



Or a useful review of the organization of work

Overtime

Entry into force
January 1, 2019

An employee may now refuse to work more than two hours (instead of four) after his regular daily working hours.

Therefore, an employer cannot force an employee to work more than two hours of overtime, except in special circumstances provided for in the Act which allow the employer to demand that the work be carried out:

- Danger to the life, health or safety of employees or the population at large
- Risk of destruction or serious deterioration of movable or immovable property
- Cases of superior force
- Contravention of the employee's professional code of ethics

Work schedule

Entry into force
January 1, 2019

Employees may refuse to work if they are not informed at least five days in advance that they will be required to work.

Thus, employers cannot force employees to work without prior notice of at least five days, except in special circumstances provided for in the Act:

- Shift extended by a maximum of two hours (refer to previous section - Overtime)
- Employees required to remain available given the nature of their duties
- Agricultural workers (e.g., tasks related to the sowing, harvesting, monitoring and maintenance of agricultural production)
- Danger to the life, health or safety of employees or the population at large
- Risk of destruction or serious deterioration of movable or immovable property
- Cases of superior force
- Contravention of the employee's professional code of ethics

Important: this amendment gives employees a right of refusal, but places no obligation on employers to provide employees with their work schedule five days in advance.

Staggering of working hours

An employee (non-unionized) may make an agreement with the employer, on an individual basis, to

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stagger his working hours over a period of more than one week for the purposes of calculating overtime, without prior authorization of the CNESST.

This agreement must meet the following conditions:

- The agreement is made in writing.
- The working hours are staggered over a maximum period of four weeks.
- Each week of the specified staggering period may not exceed the business' regular work week by more than 10 hours, which is 40 hours a week for most employees.
- The weekly average of the hours worked during the staggering period may not exceed the number of hours of the regular work week, which is usually 80 hours over a two-week staggering period, for example.
- The written agreement provides that each party may resiliate the agreement with notice of at least two weeks before the end of said agreement.

Despite this amendment to the Act, employers may still ask for the authorization of the CNESST to stagger all of their employees' working hours. In such cases, the CNESST policy entitled *Politique sur l'étalement des heures de travail* [Policy on the staggering of working hours], providing for more restrictive terms of eligibility, must be applied.

3

Improved leave entitlements



Domestic or sexual violence

Employees who have been the victim of domestic or sexual violence may now benefit from a leave of up to 26 weeks within a 12 month period, just like employees who must be absent due to sickness, organ or tissue donation, an accident or a criminal offence.

- Even if the employee has not accrued three months of uninterrupted service Entry into force January 1, 2019.
- The employment relationship is maintained during this leave

The first two days of absence owing to sickness, an organ or tissue donation for transplant, an accident, domestic violence, sexual violence or a crime will be paid.

Maximum of two paid days of leave in a given year in these situations, as for absences for family and parental reasons (refer to following section).

Family and parental leave and absences

General improvements: certain leave entitlements have been reformulated to ensure that employees caring for a relative or acting as a caregiver for someone may benefit from such entitlements and be provided with employment protection for a longer period.

The duration of the leave of absence increases from 12 to 16 weeks over a period of 12 months when an employee must be absent because of the state of health of a relative or a person for whom the employee acts as a caregiver.

- This leave entitlement is 36 weeks long if the relative or person is a minor child of the employee. Other leave entitlements have also been improved or added, such as leave in the event of the disappearance or death of a minor child.

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Remuneration for the first two days of a leave of absence to fulfil obligations relating to the care, health or education of theemployee's child or the child of the employee's spouse, or because of the state of health of the employee's spouse or relative

Entry into force
January 1, 2019

An employee may be absent from work for ten days per year to fulfil family and parental responsibilities.

> The first two annual leave days that are taken will be paid if the employee has three months of uninterrupted service.
> pour un salarié justifiant trois mois de service continu.

Entry into force
January 1, 2019

Maximum of two paid days of leave of absence in a given year for family or parental reasons, or for sickness, an organ or tissue donation for transplant, an accident, domestic violence, sexual violence or a crime (refer to previous section).

Other leave entitlements related to family or parental responsibilities

Entry into force
January 1, 2019

Authorized leave of absence for two paid days (instead of one) in the event of the death or funeral of an employee's spouse or child, the spouse's child, the employee's father, mother, brother or sister. The employee may also be absent from work, without pay, for three more days (instead of four) on such occasion.

> In the event of a birth, an adoption or the termination of a pregnancy, absence is authorized for the first two days (paid), even if the employee has not accrued 60 days of uninterrupted service.
> The option of taking three additional unpaid days off is maintained.

Statutory general holidays

An employee is entitled to an indemnity or a compensatory leave, at the employer's choice, if a holiday provided for in the Act does not coincide with an employee's regular work schedule.

Annual leave

Entry into force
January 1, 2019

Amended so that employees with three years of service (instead of five) are entitled to an annual leave for a minimum duration of three consecutive weeks.

> Despite this amendment, employees will have to have completed the reference period in which they will have accrued at least three years of service to be entitled to a third week of annual leave.

4 Psychological harassment and sexual misconduct



Harassment prevention and complaint processing policy

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Obligation to adopt a harassment prevention and complaint processing policy

Entry into force
January 1, 2019

Psychological harassment, including sexual misconduct

New time limit to file a compliant for harassment

The 90-day time limit to file a complaint has been extended to two years starting from the last incidence of the alleged conduct.

This longer time limit does not apply to complaints filed or prescribed before June 12, 2018 *(Dinu v. 9227-3754 Québec Inc.,* 2018 QCTAT 4502)
It applies to complaints filed with the CNESST or grievances filed in accordance with the collective agreement.

Best managerial practice: document all reported incidents, the decisions made subsequently and the reasons behind them, in order to include the information gathered in the response to the complaint, which may be submitted several months after the events.

Complaint filed with the Commission des droits de la personne et des droits de la jeunesse (CDPDJ – the Human Rights Commission) in the event of sexual harassment

After obtaining the concerned employee's consent, the CNESST must send all complaints of harassment involving discriminatory conduct to the CDPDJ.

5

Placement agencies (employment agencies) and temporary foreign



Provisions will come into effect on a date to be determined (subject to the adoption of a regulation)

Better protection of workers hired through personnel placement agencies and recruitment agencies for temporary foreign workers

Agencies required to obtain a licence

Personnel placement agencies

Prohibition on giving an employee a rate of wage that is less than that of other employees of the client enterprise doing the same work in the same establishment due to the employee's hiring date.

Personnel placement agencies and client enterprises are solidarily liable for pecuniary obligations

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pursuant to the Act.

Employers of temporary foreign workers

Further obligation to provide information to the CNESST such as the term of the contract and the arrival and departure dates.

6

Liability of the director or officer of a legal person



In the event of criminal prosecution for violation of the Act by a legal person or its representatives:

A director or officer of the legal person will be presumed to have personally committed the offence, unless proof of due diligence is established.

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