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Thirty-fourth Legislature, third session

1994, chapter 6
AN ACT TO AMEND THE LABOUR CODE

Bill 116

Introduced by Mr Serge Marcil, Minister of Employment

Introduced 9 November 1993

Passage in principle 30 November 1993

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Assented to 19 May 1994

Coming into force: 19 May 1994

Act amended:

Labour Code (R.S.Q., chapter C-27)





CHAPTER 6

An Act to amend the Labour Code

[Assented to 19 May 1994]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. C-27,
s. 20.2, am. **1.** Section 20.2 of the Labour Code (R.S.Q., chapter C-27) is amended by striking out the third paragraph.

c. C-27,
s. 22, am. **2.** Section 22 of the said Code is amended by replacing paragraphs *c* and *d* by the following paragraphs:

“(b.1) twelve months after the date of a certification, in the case of a group of employees for whom a collective agreement has not been made and for whom a dispute has not been submitted for arbitration or is not the object of a strike or lock-out permitted by this Code;

“(c) nine months after the date of expiration of a collective agreement or of an arbitration award in lieu thereof, in the case of a group of employees for whom a collective agreement has not been made and for whom a dispute has not been submitted for arbitration or is not the object of a strike or lock-out permitted by this Code;

“(d) from the ninetieth to the sixtieth day prior to the date of expiration of an arbitration award in lieu of a collective agreement or the date of expiration of a collective agreement or of its renewal where the term of the collective agreement is three years or less;

“(e) from the one hundred and eightieth to the one hundred and fiftieth day prior to the date of expiration of a collective agreement or of its renewal where the term of the collective agreement is more than three years and, where such term so allows, during the period extending from the one hundred and eightieth to the one hundred and fiftieth day prior to the sixth anniversary of the signing of the collective agreement or of its renewal and every other anniversary thereafter, except where such a period would end within twelve

months or less of the one hundred and eightieth day prior to the date of expiration of the collective agreement or of its renewal.”

c. C-27,
s. 41, am.

3. Section 41 of the said Code is amended by replacing the words “*c* or *d*” in the first and second lines of the first paragraph by the words “*b.1, c, d* or *e*”.

c. C-27,
s. 42, am.

4. Section 42 of the said Code is amended

(1) by inserting the words “or a petition concerning a matter relating to the application of section 45” after the word “certification” in the second line of the first paragraph;

(2) by replacing the words “petition for certification, reconsideration or cancellation of certification” in the third and fourth lines of the second paragraph by the word “matter”.

c. C-27,
s. 47.3, am.

5. Section 47.3 of the said Code is amended

(1) by replacing the words “shall, if he wishes to invoke this section, submit a written complaint to the Minister within six months.” in the third and fourth lines by the words “must within six months, if he wishes to avail himself of this section, either

(1) submit a written complaint to the Minister; or

(2) submit to the Court or mail to the address of the Court a written application for an order directing that his claim be referred to arbitration.”;

(2) by striking out the second sentence.

c. C-27,
s. 47.4, am.

6. Section 47.4 of the said Code is amended

(1) by inserting, at the beginning, the following paragraph:

Investigator

“47.4 Where the Minister receives a complaint under section 47.3, he shall appoint an investigator who shall endeavour to settle the complaint to the satisfaction of the employee and the certified association.”;

(2) by replacing the words “shall, if he wishes to invoke section 47.2, apply to the Court within the fifteen ensuing days to request” in the third and fourth lines by the words “must within the following fifteen days, if he still wishes to avail himself of section 47.2, submit to the Court or mail to the address of the Court a written application for an order directing”.

c. C-27,
Div. IV,
ss. 50.1, 50.2,
added

7. The said Code is amended by inserting, after section 50, the following headings and sections:

“DIVISION IV

“GENERAL PROVISIONS

Joinder of
matters

“50.1 Two or more matters submitted to the labour commissioner general under this Code or any other Act and in which the questions in dispute are substantially the same or could properly be combined may, whether or not they involve the same parties, be joined by order of the commissioner general, on the conditions he fixes.

Revocation
or amend-
ment of
order

The order made under the first paragraph may be revoked or amended by the labour commissioner hearing the matter if he believes that the purposes of justice will thus be better served.

Taxation
and expenses

“50.2 Every person summoned to testify before a labour commissioner in any matter governed by this Code or any other Act is entitled to the same taxation as witnesses before the Superior Court and to the reimbursement of his travelling and living expenses.

Payment

Such taxation is payable by the party who proposed the summons, but the person who receives his salary during such period is entitled only to the reimbursement of travelling and living expenses.”

c. C-27,
s. 52.1,
replaced

8. Section 52.1 of the said Code is replaced by the following section:

Transmis-
sion or ser-
vice of notice

“52.1 The party giving notice under section 52 shall transmit the notice to the addressee by fax, messenger service or registered or certified mail or cause it to be served on him by a bailiff.”

c. C-27,
s. 52.2, am.

9. Section 52.2 of the said Code is amended

(1) by replacing the word “given” in the second line of the first paragraph and in the second line of the second paragraph by the word “received”;

(2) by striking out the third paragraph.

c. C-27,
s. 53, am.

10. Section 53 of the said Code is amended by replacing the words “notice has been given in accordance with section 52 or is deemed to have been given” in the first and second lines of the first paragraph by the words “the notice referred to in section 52 has been received by the addressee or is deemed to have been received”.

c. C-27,
s. 58, am.

11. Section 58 of the said Code is amended

(1) by replacing the words “by the Minister of a copy of the notice sent to him” in the second line by the words “, by the person to whom it is addressed, of the notice served on him or transmitted to him”;

(2) by replacing the word “reçue” in the third line of the French text by the word “reçu”.

c. C-27,
s. 59, am.

12. Section 59 of the said Code is amended by replacing the words “is acquired” in the second line of the first paragraph and in the second line of the second paragraph by the words “or to strike is exercised”.

c. C-27,
s. 61.1, am.

13. Section 61.1 of the said Code is amended by adding, at the end, the following words: “where its term is three years or less”.

c. C-27,
s. 65,
replaced

14. Section 65 of the said Code is replaced by the following section:

Term of col-
lective
agreement

“65. A collective agreement shall have a specified term of not less than one year.

Term of
first collec-
tive agree-
ment

In the case of a first collective agreement for a group of employees contemplated by the certification, the term shall not be more than three years.”

c. C-27,
s. 72, am.

15. Section 72 of the said Code is amended

(1) by replacing the word “five” in the second line of the first paragraph by the word “two”;

(2) by striking out the words “of a true copy” in the third line of the first paragraph.

c. C-27,
s. 73, am.

16. Section 73 of the said Code is amended by replacing the words “during the ninety days preceding the date of expiration or renewal of the agreement or the date of expiration of the arbitration award” in the fifth, sixth and seventh lines by the words “, as the case may be,

(1) in the ninety days preceding the date of expiration of the arbitration award or the date of expiration or renewal of the collective agreement where its term is three years or less;

(2) in the one hundred and eighty days counting from the beginning of any period in which certification may be applied for where the term of the agreement is more than three years”.

c. C-27,
s. 77, am.

17. Section 77 of the said Code is amended by striking out the third paragraph.

c. C-27,
s. 79, am.

18. Section 79 of the said Code is amended by replacing the words “must, before acting, make oath to” in the first line of the first paragraph by the word “shall”.

c. C-27,
s. 84, am.

19. Section 84 of the said Code is amended

(1) by inserting the words “on the initiative of” after the word “or” in the first line;

(2) by replacing the word “clerk” in the second line by the word “arbitrator”.

c. C-27,
s. 86,
replaced

20. Section 86 of the said Code is replaced by the following section:

Taxation
and expenses

“86. Every person summoned to testify before an arbitrator is entitled to the same taxation as witnesses before the Superior Court and to the reimbursement of his travelling and living expenses.

Payment

Such taxation is payable by the party who proposed the summons, but the person who receives his salary during such period is entitled only to the reimbursement of travelling and living expenses.”

c. C-27,
s. 87, am.

21. Section 87 of the said Code is amended

(1) by replacing the word “clerk” in the first line by the word “arbitrator”;

(2) by replacing the words “the arbitrator” in the second line by the word “him”.

c. C-27,
s. 99.3, am.

22. Section 99.3 of the said Code, enacted by section 4 of chapter 6 of the statutes of 1993, is amended by replacing the words “must, before acting, make oath to” in the first line by the word “shall”.

c. C-27,
s. 99.9, am.

23. Section 99.9 of the said Code, enacted by section 4 of chapter 6 of the statutes of 1993, is amended by striking out the words “the third paragraph of section 77,” in the first line of the second paragraph.

c. C-27,
s. 101.5, am.

24. Section 101.5 of the said Code is amended by replacing the words “of his appointment” in the second and third lines by the words “after either the end of the last arbitration sitting or, if there are no arbitration sittings, the beginning of the advisement”.

c. C-27,
s. 101.7, am.

25. Section 101.7 of the said Code is amended by replacing the words “of a party or the labour commissioner general” in the fourth line by the words “by a party”.

c. C-27,
s. 103, am.

26. Section 103 of the said Code is amended

(1) by adding, at the end of the first paragraph, the following sentence: “The regulation may also determine who shall assume the payment of the remuneration and expenses and, where applicable, in what proportion, as well as the cases where an agreement on different remuneration or expenses may be made and the conditions governing such an agreement.”;

(2) by replacing the word “It” in the first line of the second paragraph by the words “The Government”.

c. C-27,
s. 111.0.16,
am.

27. Section 111.0.16 of the said Code is amended by replacing paragraph 6 by the following paragraph:

“(6) an undertaking engaging in the incineration of waste or the removal, transportation, storage, treatment, processing or elimination of household garbage, bio-medical waste, dead animals unfit for human consumption or animal residues intended for salvaging;”.

c. C-27,
s. 111.0.23.1,
added

28. The said Code is amended by inserting, after section 111.0.23, the following section:

Written
notice

“111.0.23.1 A certified association in a public service contemplated in an order made under section 111.0.17 must give the Minister, the employer and the council a written notice indicating its intention not to resort to a strike at the time indicated in the notice given under section 111.0.23 or, as the case may be, the time at which a return to work is intended.

Working
hours

The notice must be given during the working hours of the public service.

Perfor-
mance of
work

An employer is not required to allow the work to be performed after the time indicated in the strike notice or, as the case may be, in the return-to-work notice, before the expiration of a four-hour period after receipt of the notice given in accordance with the second paragraph. However, the parties may agree upon a shorter period. In the case of a public service contemplated by an order made under section 111.0.17, essential services shall be maintained until the date of return to work.”

c. C-27,
s. 111.1, am.

29. Section 111.1 of the said Code is amended by inserting the words “and the possibility of agreeing on a term of more than three years for a collective agreement” after the words “Chapter IV” in the first line.

c. C-27,
s. 124, am.

30. Section 124 of the said Code is amended by adding, at the end, the following paragraph:

Expiration
of time limit

“In addition, the Court may, on a motion, allow a party to act after the expiration of the time limit for filing a motion or an appeal, if the party shows that it was in fact impossible for him to act sooner and if not more than three months have elapsed since the expiration of that time limit.”

c. C-27,
s. 130, am.

31. Section 130 of the said Code is amended

(1) by replacing the words “party wishing to appeal from a decision of a labour commissioner must apply for leave therefor from a judge designated to preside over the hearing of the Court, by motion,” in the first, second and third lines of the first paragraph by the words “appeal is brought by means of a written declaration,”;

(2) by replacing the word “motion” in the seventh line of the first paragraph by the word “declaration”;

(3) by replacing the second, third, fourth and fifth paragraphs by the following paragraphs:

Contents of
declaration

“The declaration of appeal must identify the decision appealed from, contain an account of the grounds invoked in support of the appeal and, where applicable, indicate the surname and given name of the representative of the appellant.

Execution of
decision

An appeal regularly brought suspends the execution of the decision appealed from unless the Court, upon a motion by an interested party, orders the provisional execution of the decision in cases of exceptional urgency.”

c. C-27,
s. 130.1,
added

32. The said Code is amended by inserting, after section 130, the following section:

Motion to
dismiss

“130.1 The Court may, on a motion which has been served and filed at the clerk’s office, within ten days after service of the declaration of appeal, summarily dismiss an appeal it deems improper or dilatory, or subject it to the conditions it determines.

Dismissal by
the court

The matter may also be raised, on the initiative of the Court, at the hearing it holds on the appeal.”

c. C-27,
s. 131, am. **33.** Section 131 of the said Code is amended by replacing the first sentence by the following sentence:

Hearing and
judgment **“131.** The Court shall hear the appeal within thirty days of the filing, at the clerk’s office, of the declaration of appeal, and shall render a final judgment as soon as possible within the time prescribed in section 135.1.”

c. C-27,
s. 134, am. **34.** Section 134 of the said Code is amended by adding, at the end, the following paragraphs:

Taxation
and expenses: **“He is also entitled to the same taxation as witnesses before the Superior Court and to the reimbursement of his travelling and living expenses.**

Payment **Such taxation is payable by the party who proposed the summons, but the person who receives his salary during that period is entitled only to the reimbursement of travelling and living expenses.”**

c. C-27,
ss. 135.1,
135.2, added **35.** The said Code is amended by inserting, after section 135, the following sections:

Judgment **“135.1** In any case, of whatever nature, including an appeal contemplated in section 129, the judgment must be rendered within ninety days after being taken under advisement. However, the chief judge may extend that period.

Removal **Where the judge seized of a matter fails to render a judgment within ninety days or, as the case may be, within such additional time as is granted under the first paragraph, the chief judge may, on his own initiative or on a motion by one of the parties, remove the matter from the judge and order that the matter be continued by another judge or heard again.**

Extension
or removal **Before granting an extension or removing a matter from the judge who failed to render a judgment within the time prescribed, the chief judge shall take account of the circumstances and of the interests of the parties.**

Oral evi-
dence **“135.2** The judge called upon to continue or hear a matter assigned to him pursuant to section 135.1 may, as regards oral evidence and with the consent of the parties, limit the proof to the notes and minutes of the hearing, provided that, where he considers them to be insufficient, he recalls a witness or requires any other proof.”

c. C-27,
s. 138, am. **36.** Section 138 of the said Code is amended by replacing the words “the period of thirty days provided for in paragraph d” in the

fourth line of subparagraph *b* of the first paragraph by the words “a thirty-day period referred to in subparagraph *d* or *e*”.

Collective
agreement

37. A collective agreement having a term that exceeds three years, entered into before 19 May 1994 and filed in accordance with section 72 of the Labour Code, is valid as regards its term. It shall be governed for the future by the provisions of the Labour Code as amended by this Act.

Renewal

In addition, a collective agreement that is renewed under a specific provision to that effect included in a collective agreement entered into before 19 May 1994 is also valid as regards its term.

Report

38. The Minister of Employment shall, on or before 1 April 2000, make a report to the Government on the application of sections 2 and 14 of this Act.

Tabling

The report shall be tabled within the next 15 days in the National Assembly if it is in session or, if it is not sitting, within 15 days of resumption.

Parliamen-
tary Com-
mittee

Within six months after the date of the tabling, the competent committee of the National Assembly shall proceed with the consideration of the report and examine the application of sections 2 and 14 of this Act. It shall hear, on that matter, such representative bodies as it may designate.

Coming into
force

39. This Act comes into force on 19 May 1994.