

1983, chapter 43

AN ACT RESPECTING RESTAURANT AND HOTEL WORKERS WHO DERIVE INCOME FROM GRATUITIES

Bill 43

Introduced by Mr Alain Marcoux, Minister of Revenue

First reading: 15 November 1983

Second reading: 22 November 1983

Third reading: 16 December 1983

Assented to: 21 December 1983

**Coming into force: 21 December 1983, except sections 1, 3 to 6, 8, 10, 11 and 12 which will
come into force by proclamation of the Government**

Acts amended:

Workmen's Compensation Act (R.S.Q., chapter A-3)

National Holiday Act (R.S.Q., chapter F-1.1)

Taxation Act (R.S.Q., chapter I-3)

Act respecting the Ministère du Revenu (R.S.Q., chapter M-31)

Act respecting labour standards (R.S.Q., chapter N-1.1)

Act respecting the Régie de l'assurance-maladie du Québec (R.S.Q., chapter R-5)

Act respecting the Québec Pension Plan (R.S.Q., chapter R-9)

Meals and Hotels Tax Act (R.S.Q., chapter T-3)





CHAPTER 43

An Act respecting restaurant and hotel
workers who derive income
from gratuities

[Assented to 21 December 1983]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. A-3, s. 46, am. **1.** Section 46 of the Workmen's Compensation Act (R.S.Q., chapter A-3) is amended by replacing the first paragraph of subsection 2 by the following paragraph:

Basis for computation “(2) The Commission determines the income of the worker, basing itself on his earnings, including, where such is the case, his gratuities declared and allocated under sections 42.2 and 42.3 of the Taxation Act (R.S.Q., chapter I-3), during the twelve months preceding his accident if his employment was not less than twelve months in the employ of the same employer, or during any other shorter period during which he was in the employ of his employer, according to the method it deems most appropriate to the circumstances.”

c. A-3, s. 88, am. **2.** Section 88 of the said Act is amended

(1) by replacing the first paragraph of subsection 1 by the following paragraph:

Statement of wages earned “**88.** (1) Every employer shall yearly, on or before the date prescribed by the regulations of the Commission, prepare and transmit to the Commission a statement of the amount of the wages earned by all his employees, including, where such is the case, the gratuities that he is deemed to have paid them under section 1015.2 of the Taxation Act (R.S.Q., chapter I-3), during the twelve months preceding the date fixed by the Commission or any part thereof specified by the Commission and of the amount which he estimates he will expend for wages, including, where such is the case, the gratuities he will be deemed to

have paid under the said section 1015.2, during the then current year or any part thereof specified by the Commission, the number of employees contemplated in each case and such additional information as the Commission may require.”;

(2) by replacing subsection 2 by the following subsection:

Account of
wages

“(2) For the purposes of this Act, every employer shall keep, in the usual form and with all the details required, a careful and accurate account of all wages paid to his employees, including, where such is the case, the gratuities that he is deemed to pay them under section 1015.2 of the Taxation Act; and such account shall be constantly kept within Québec and shall be produced to the Commission and its officers when so required.”;

(3) by replacing subsection 5 by the following subsection:

Additional
assessment

“(5) The Commission may, if the employer fails to furnish or delays in furnishing the statement prescribed by subsection 1 or furnishes an insufficient statement of the wages he has to pay to his employees, including, where such is the case, the gratuities that he is deemed to pay them under section 1015.2 of the Taxation Act, in addition to any other penalty provided by this Act, condemn the employer to pay, as the case may be, an additional amount of assessment or interest, as fixed by the Commission.”

c. I-3, s. 36,
am.

3. Section 36 of the Taxation Act (R.S.Q., chapter I-3) is amended by replacing the first paragraph by the following paragraph:

Amounts to
be included

“**36.** An individual shall, in computing his income for the year from an office or employment, include the amounts he receives or benefits from during that year or which are allocated to him for that year, and that are provided for in this chapter.”

c. I-3, Div.
II.1, ss.
42.1-42.5,
added

4. The said Act is amended by inserting, after section 42, the following division and sections:

“DIVISION II.1

“GRATUITIES

Gratuities

“**42.1** An individual shall, in computing his income, include the gratuities he receives or benefits from in any manner and the gratuities allocated to him under section 42.2.

Exception

Notwithstanding this section, an individual shall not include that part of the gratuities which he pays to another employee.

Computation

“**42.2** Every person who employs an individual whose remuneration ordinarily includes gratuities and whose duties are performed wholly or partly in premises of an establishment, within the

meaning of the Meals and Hotels Tax Act (R.S.Q., chapter T-3), where meals and beverages are served, except a cafeteria or a fast food outlet where there is no table service and where the employees do not ordinarily receive gratuities, or an individual whose duties wholly or partly consist in delivering meals or beverages in the establishment outside such premises, shall allocate to the employee for each pay period, if the employee does not belong to a class excluded by regulation, his share of the difference between 8% of the sales on which gratuities are expected for the preceding pay period, made in the premises or on delivery in the establishment and imputable to such employees, and the total gratuities declared by the employees for the same period in respect of the sales.

Agreement
with
employees

The person shall make the allocation in accordance with the terms and conditions of a written agreement to that effect between him and the employees or, failing such an agreement, in the manner prescribed by regulation.

Written
declaration

“42.3 An individual contemplated in section 42.2 or an individual who delivers meals or beverages outside an establishment shall declare in writing to his employer, at the beginning of each pay period, for the preceding pay period, the difference between the gratuities he received or benefited from in any manner in the course of his duties in the premises or in making a delivery and the gratuities he paid to another employee.

Separate
declaration

For such purpose, the gratuities earned by an individual on deliveries outside the establishment shall be declared separately from all other gratuities.

Declaration
to the
employer

“42.4 Every person who operates an establishment, except a cafeteria or a fast food outlet where there is no table service and where the employees do not ordinarily receive gratuities, in which an individual contemplated in section 42.2 who is not his employee works shall declare in writing to the individual's employer, at the beginning of each pay period, for the preceding pay period, the sales of his establishment on which gratuities were expected, which were made in any premises or on delivery in the establishment and are imputable to each such individual.

Lower
percentage

“42.5 The Minister, if he considers it necessary, may determine a lower percentage in respect of any premises or a category of sales of any premises than that mentioned in section 42.2.

Request to
the Minister

He may also determine such a percentage if the person required to make the allocation requests it, or in case the person refuses to do so if the majority of his employees of any premises requests it, and establishes to the satisfaction of the Minister that the percentage of 8% is too high in view of the circumstances.

Minimum percentage In no case may the percentage determined under this section be lower than 5%.”

c. I-3, s. 1015.2, added **5.** The said Act is amended by inserting, after section 1015.1, the following section:

Presumption **“1015.2** For the purposes of section 1015, every person who employs an individual contemplated in section 42.2 or 42.3 is deemed to pay to the individual every gratuity he is required to allocate to him under section 42.2 or that the individual declares to him under section 42.3.”

c. F-1.1, s. 4, am. **6.** Section 4 of the National Holiday Act (R.S.Q., chapter F-1.1) is amended by adding the following paragraph:

Computation of the indemnity **“Notwithstanding the first paragraph, in the case of an employee who is an individual contemplated in section 42.2 or 42.3 of the Taxation Act (R.S.Q., chapter I-3), the said indemnity is computed on the basis of the wage increased by gratuities declared and allocated under the said sections 42.2 and 42.3.”**

c. M-31, s. 34, am. **7.** Section 34 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by adding the following subsection:

Register of gratuities **“(3)** Every person who employs an individual contemplated in section 42.2 or 42.3 of the Taxation Act shall furnish to each such employee a copy of the registers of gratuities put at his disposal by the Minister.”

c. M-31, ss. 59, 60, 61, replaced **8.** Sections 59, 60 and 61 of the said Act are replaced by the following sections:

Penalty for failure to make a return **“59.** Every person who fails to file a return or report as and when prescribed by a fiscal law or a regulation made under such a law, or fails to furnish the register mentioned in subsection 3 of section 34, incurs a penalty of \$10 for each day during which the failure continues, up to \$2 500.

Penalty for failure to make an allocation **“59.1** Every person who fails to make the allocation prescribed in section 42.2 of the Taxation Act (R.S.Q., chapter I-3) incurs a penalty of 50% of the amount that has not been allocated.

Offences and penalties **“60.** Every person who fails to file a return or report as and when prescribed by a fiscal law or a regulation made under such a law, or fails to furnish the register mentioned in subsection 3 of section 34, is guilty of an offence and, in addition to any other penalty provided by that fiscal law, is liable to a fine of at least \$25 for each day during which the failure continues.

Offences and
penalties

“61. Every person who does not comply with or contravenes section 20, subsection 1 or 2 of section 34, sections 35 to 39 or section 43, section 42.2 or 1015 of the Taxation Act (R.S.Q., chapter I-3) or sections 59 and 63 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9), is guilty of an offence and, in addition to any other penalty provided by this Act, is liable to a fine of not less than \$200 nor more than \$10 000, or both the fine and imprisonment for not over six months.”

c. N-1.1, s.
29, am.

9. Section 29 of the Act respecting labour standards (R.S.Q., chapter N-1.1) is amended by replacing paragraph 5 by the following paragraph:

“(5) levy, upon employers, an amount not exceeding 1% of their total wage bill, including the wages they are deemed to pay pursuant to section 1015.2 of the Taxation Act (R.S.Q., chapter I-3), fix the maximum amount of wages that is subject to the levy, and the minimum wage bill that makes an employer subject to the levy; this regulation must fix the method and rate of the levy and the period for which it is exigible, and be accompanied with an estimated statement of receipts and expenditures of the Commission;”.

c. N-1.1, s.
46, am.

10. Section 46 of the said Act is amended

(1) by replacing the period at the end of subparagraph 11 of the first paragraph by a semicolon;

(2) by adding, at the end of the first paragraph, the following subparagraphs:

“(12) the amount of the gratuities declared by the employee in accordance with section 42.3 of the Taxation Act (R.S.Q., chapter I-3);

“(13) the amount of the gratuities he has allocated to the employee under section 42.2 of the Taxation Act.”

c. N-1.1, s.
50, am.

11. Section 50 of the said Act is amended by adding the following paragraph:

Computation
of the
indemnity

“However, an indemnity provided for in section 58, 62, 74, 76, 80, 81 or 83 is computed, in the case of an employee who is an individual contemplated in section 42.2 or 42.3 of the Taxation Act (R.S.Q., chapter I-3), on the basis of the wage increased by the gratuities declared and allocated under the said sections 42.2 and 42.3 except for the term of an agreement in force on 1 January 1984, in which case such an indemnity shall be equal to the one provided by the agreement, subject to section 93, plus the amount obtained by applying the standards of this Act to the declared and allocated gratuities.”

c. N-1.1, s.
99, replaced

12. Section 99 of the said Act is replaced by the following section:

Claim of
other
benefits

“99. Where the employer fails to pay the other pecuniary benefits resulting from the application of this Act or a regulation, the Commission may claim these benefits on the basis of the usual hourly wage of the employee and his gratuities declared and allocated under sections 42.2 and 42.3 of the Taxation Act (R.S.Q., chapter I-3).”

c. R-5, s. 34,
replaced

13. Section 34 of the Act respecting the Régie de l'assurance-maladie du Québec (R.S.Q., chapter R-5) is replaced by the following section:

Contribution
of employers

“34. Every employer, on the date and in the manner prescribed, shall pay to the Minister of Revenue a contribution equal to 3% of the wages that he pays and that he is deemed to pay under section 1015.2 of the Taxation Act (R.S.Q., chapter I-3) to his employee who reports for work in his establishment in Québec or to whom those wages, if the employee is not required to report for work at an establishment of his employer, are paid or deemed paid from such an establishment in Québec.”

c. R-9, s. 50,
am.

14. Section 50 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing paragraph *a* by the following paragraph:

“(a) his pensionable salary and wages for the year paid by his employer and the amount he is deemed to be paid by him under section 1015.2 of the Taxation Act, minus the amount prescribed as or on account of his personal exemption;”.

c. T-3, s. 5,
am.

15. Section 5 of the Meals and Hotels Tax Act (R.S.Q., chapter T-3) is amended by replacing subsection 6 by the following subsection:

Suspension
or cancella-
tion of the
certificate

“(6) The Minister may also suspend or cancel the certificate of a person found guilty of an infringement of this Act or of an offence described in section 60 or 61 of the Act respecting the Ministère du Revenu.”

Exception

16. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

Coming into
force

17. This Act comes into force on the day of its sanction and applies from 1 January 1984 in respect of pay periods beginning after 31 December 1983.

Coming into
force

Notwithstanding the first paragraph, sections 1, 3 to 6, 8, 10, 11 and 12, to the extent that they refer to an allocation of gratuities or to gratuities that are allocated, come into force on the date fixed by proclamation of the Government.