

NATIONAL ASSEMBLY

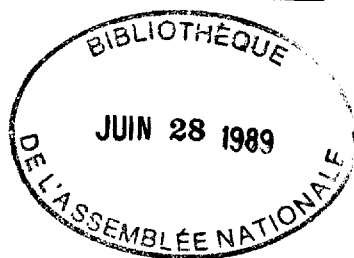
SECOND SESSION

THIRTY-THIRD LEGISLATURE

Draft Bill

**An Act to amend the Act respecting
labour standards and other
legislative provisions**

Introduction



**Introduced by
Mr André Bourbeau
Minister of Manpower and Income Security**

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EXPLANATORY NOTES

This draft bill proposes a revision of the Act respecting labour standards.

It introduces into that Act a parental leave without pay, to be fixed by regulation, and a five-day leave, including two days with pay, available upon a birth or adoption. It also proposes that parents have the benefit of a reserve of five days of leave without pay to attend to their parental duties, and that they be entitled, for the same purpose, to refuse to work overtime except in exceptional circumstances or unless their employer asks them twelve hours in advance.

Further, the draft bill proposes improvements to other labour standards, in particular, the addition of one more holiday, and the reduction from ten to five years of the number of years of service required to entitle an employee to three weeks of vacation.

The draft bill also specifies the functions and powers of the Commission des normes du travail, particularly as to promoting agreement between employers and employees in respect of their disputes relating to the application of the Act. It is also designed to promote employees' exercise of their rights by making their recourses more readily available.

The draft bill furthermore proposes to broaden the scope of the Act, particularly by including certain government agencies but not senior officers except in respect of certain family leaves. Several other amendments are included for the sake of clarification and simplification.

Lastly, the draft bill contains a transitional provision which would make the new standards inapplicable to employees until the expiry of their present collective agreement or of the collective agreement concluded ninety days or less from the coming into force of the Act, as the case may be. This transitional provision also applies to collective agreement decrees.

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ACTS AMENDED BY THIS BILL:

- Act respecting labour standards (R.S.Q., chapter N-1.1);
- National Holiday Act (R.S.Q., chapter F-1.1);
- Act respecting the Ministère de la Main-d'oeuvre et de la Sécurité du revenu (R.S.Q., chapter M-19.1);
- Act to amend the Labour Code and various legislation (1983, chapter 22).

Draft Bill

An Act to amend the Act respecting labour standards and other legislative provisions

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING LABOUR STANDARDS

1. Section 1 of the Act respecting labour standards (R.S.Q., chapter N-1.1) is amended by striking out the words “this word does not, however, include an employee whose main duty is the care of a child, or of a disabled, handicapped or aged person;” in the third, fourth and fifth lines of paragraph 6.

2. Section 2 of the said Act is amended by replacing paragraph 3 by the following paragraph:

“(3) to the Government agencies whose employees are not appointed or remunerated under the Public Service Act (R.S.Q., chapter F-3.1.1).”

3. Section 3 of the said Act is amended

(1) by striking out paragraph 1;

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

“(2) to an employee whose exclusive duty is the supervision or care, in a dwelling, of a child, or of a sick, handicapped or aged person, if that work does not serve to procure profit to the employer;”;

(3) by replacing paragraph 3 by the following paragraph:

“(3) to the employee governed by the Act respecting labour relations, vocational training and manpower management in the

construction industry (R.S.Q., chapter R-20), except in respect of the standards contemplated in sections 81.1 to 81.3 and, where they relate to one of such standards, in respect of the second and third paragraphs of section 74, paragraph 6 of section 89, Division IX of Chapter IV, and Chapters V and VII;”;

(4) by adding the following paragraph after paragraph 5:

“(6) to senior management personnel, except in respect of the standards contemplated in sections 81.1 to 81.3 and, where they relate to one of such standards, in respect of the second and third paragraphs of section 74, paragraph 6 of section 89, Division IX of Chapter IV, and Chapters V and VII.”

4. Section 3.1 of the said Act is amended by inserting the words “of Chapter IV” after the figure “VI.1” in the first line.

5. The said Act is amended by inserting the following section after section 3.1:

“3.2 Divisions I and II of Chapter IV do not apply to an employee employed for the operation of a farm operated

(1) by a natural person who operates it alone or with his spouse or a descendant or ascendant of either, with the habitual assistance of not more than three employees;

(2) by a corporation the principal occupation of which is the operation of that farm with the habitual assistance of not more than three employees in addition to the three principal shareholders of the corporation if they work there;

(3) by a partnership or by natural persons acting as co-owners, with the habitual assistance of not more than three employees.”

6. Section 5 of the said Act is amended by adding the following paragraph at the end:

“(5) endeavour to bring about agreement between employers and employees in respect of their disputes relating to the application of this Act and the regulations.”

7. Section 26 of the said Act is amended by replacing the word “three” in the first line by the word “six”.

8. Section 29 of the said Act is amended by replacing the words “the method and rate of the levy and the period for which it is exigible,

and” in the sixth and seventh lines of paragraph 5, by the words “the method of calculation and the rate of the levy, the report of the employer which must accompany the levy, the date on which the report must be produced and the levy paid to the Commission; this regulation must”.

9. The said Act is amended by inserting, after section 29, the following sections:

“29.1 The amount of the levy determined under paragraph 5 of section 29 bears interest at the rate fixed by regulation under section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31), from the date on which the levy becomes exigible.

“29.2 An employer who, by the prescribed date, does not produce the report contemplated in paragraph 5 of section 29 must add 5% to the amount of the levy due.”

10. Section 30 of the said Act is amended by adding the following paragraph after paragraph 15:

“(16) employers subject to the Act respecting labour relations, vocational training and manpower management in the construction industry in respect of wages paid to employees under that Act.”

11. Section 39 of the said Act is amended by replacing paragraph 5 by the following paragraph:

“(5) accept for an employee, with his consent, or for a group of employees contemplated in a claim, with the consent of the majority of them, partial payment of the amounts due to the employee or to the group of employees by the employer;”.

12. Section 43 of the said Act is amended by adding the following sentence at the end of the first paragraph: “However, any amount in excess of the regular wages, such as a bonus or premium for overtime, earned during the week preceding payment of the wages, may be paid with the subsequent regular payment.”

13. Section 46 of the said Act is amended

(1) by inserting the words “, where applicable,” after the word “particular” in the fourth line of the first paragraph;

(2) by inserting the words “or replaced by a leave” after the word “paid” in the first line of paragraph 6;

(3) by striking out the word “hourly” in paragraph 8 of the English text.

14. The said Act is amended by inserting, after the heading of Division II of Chapter IV, the following section:

“51.1 An employee who has obligations in respect of the care, health or education of his minor child may refuse to work after his regular working-hours unless his employer has informed him at least twelve hours in advance that his services would be required.

Notwithstanding the first paragraph, an employer may require an employee to work after his regular working-hours, without notice, in the following cases:

(1) if, due to an unforeseen circumstance, the absence of that employee would endanger the health or security of any person;

(2) if urgent work must be carried out on equipment or installations, but only to the extent that such work is necessary to avoid significant disruption of the activities of the establishment.

This section does not apply to categories of employees determined by regulation of the Government.”

15. Section 54 of the said Act is amended by replacing paragraph 2 by the following paragraph:

“(2) a student employed in a vacation camp or in a social or community non-profit organization such as a recreational organization;”.

16. Section 55 of the said Act is amended by adding the following paragraphs at the end:

“Notwithstanding the first paragraph, the employer may, at the written request of the employee, replace the payment of overtime by paid leave equivalent to the overtime worked plus 50%.

The leave must be taken during the 12 months following the overtime at a date agreed between the employer and the employee; otherwise the overtime must be paid.”

17. Section 60 of the said Act is replaced by the following section:

“60. The following days are statutory general holidays:

(1) 1 January;

(2) Good Friday or, for employees who work in a commercial establishment within the meaning of the Act respecting commercial establishments business hours (R.S.Q., chapter H-2), Good Friday or Easter Monday, the choice to be made by the employer;

(3) the Monday preceding 25 May;

(4) 1 July, or 2 July if 1 July falls on a Sunday;

(5) the first Monday in September;

(6) the second Monday in October;

(7) 25 December.

However, this section does not apply to employees who, under a collective agreement or decree, benefit by at least seven non-working days with pay, in addition to the National Holiday, nor to other employees in the same establishment who also benefit by the holidays provided for in the said agreement or decree."

18. Section 61 of the said Act is repealed.

19. Section 62 of the said Act is replaced by the following section:

"62. When a holiday coincides with a working day for an employee, the employer must pay him an indemnity equal to the average of his daily wages for the days worked during the complete period of pay preceding that holiday, without taking account of his overtime.

Notwithstanding the first paragraph, the indemnity paid to an employee remunerated mainly on commission must be equal to the average of his daily wages as established from all the complete periods of pay during the three months preceding the holiday."

20. Section 65 of the said Act is amended by adding the following paragraph:

"The first paragraph does not confer a benefit on employees who would not be entitled to remuneration in the absence of the holiday, except so far as section 64 applies."

21. Section 69 of the said Act is amended

(1) by replacing, on (*insert here the date three months after the date of assent to this Act*), the word “ten” in the second line by the word “seven”;

(2) by replacing, on (*insert here the date one year and three months after the date of assent to this Act*), the word “seven” in the second line by the word “six”;

(3) by replacing, on (*insert here the date two years and three months after the date of assent to this Act*), the word “six” in the second line by the word “five”;

(4) by striking out the words “, two of which may be consecutive” at the end.

22. Section 71 of the said Act is amended

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

“**71.** The part of the annual holiday which exceeds one week may be divided at the request of the employee if the employer consents.”;

(2) by striking out the words “into more than two periods,” in the second and third lines of the second paragraph;

(3) by striking out the third paragraph.

23. Section 74 of the said Act is amended

(1) by replacing the first two lines of the second paragraph by the following lines: “Should an employee be absent during the reference year owing to sickness or injury or, for a period of not more than 20 weeks, be on family leave provided under section 81.3, and should such absence or leave”;

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

“Notwithstanding the second paragraph, the annual leave indemnity must not exceed the indemnity to which the employee would have been entitled if he had not been absent or on leave for a reason provided in the second paragraph.”

24. Section 77 of the said Act is amended

(1) by replacing paragraph 2 by the following paragraph:

“(2) a student employed in a vacation camp or in a social or community non-profit organization such as a recreational organization;”;

(2) by replacing the word “salesman” in the first line of paragraph 3 by the words “real estate agent”;

(3) by replacing paragraph 4 by the following paragraph:

“(4) a representative of a dealer or adviser contemplated in section 149 of the Securities Act (R.S.Q., chapter V-1.1), entirely remunerated on commission;”.

25. The said Act is amended by striking out the words “AND MISCELLANEOUS LEAVES” in the heading of Division V of Chapter IV.

26. The said Act is amended by inserting the following headings after section 79:

“DIVISION V.1

“FAMILY LEAVES”.

27. The said Act is amended by inserting, after section 80, the following section:

“**80.1** An employee may be absent from work for one day, without pay, by reason of the death or the funeral of a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law or one of his grandparents.”

28. Section 81 of the said Act is amended by replacing the words “and for two days at the birth or adoption of a child” in the second and third lines of the second paragraph, by the words “or of his father, mother, brother or sister.”

29. The said Act is amended by inserting, after section 81, the following sections:

“**81.1** An employee may be absent from work for five days at the birth or adoption of a child. The first two days of absence shall be remunerated.

This leave may be divided into days. It may not be taken more than fifteen days after the child arrives at the home of its father or mother.

This section does not apply when an employee adopts the child of his spouse.

“**81.2** An employee may be absent from work for five days each year, without pay, to fulfill obligations relating to the care, health or

education of his minor child. This leave may be divided into days or half-days.

“81.3 An employee may be absent from work, without pay, in the cases and under the terms and conditions provided by regulation of the Government, by reason of maternity, paternity or adoption.

The length of absence is determined by regulation of the Government, but shall not exceed one year.

This section does not apply when an employee adopts the child of his spouse.”

30. The said Act is amended by replacing the heading of Division VI of Chapter IV by the following heading:

“NOTICE OF TERMINATION OF EMPLOYMENT AND LAYOFF, AND WORK CERTIFICATE”.

31. Sections 82 and 83 of the said Act are replaced by the following sections:

“82. The employer must give written notice to an employee before ending his contract of employment or laying him off for six months or more.

This notice shall be of one week if the employee is credited with less than one year of uninterrupted service, two weeks if he is credited with one year to five years of uninterrupted service, four weeks if he is credited with five years to ten years of uninterrupted service and eight weeks if he is credited with ten years or more of uninterrupted service.

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 a seasonal enterprise.

This section does not deprive an employee of a right granted to him under another Act.

“82.1 Section 82 does not apply in the case of an employee

(1) who is not credited with three months of uninterrupted service;

(2) whose contract for a fixed term or for a specific enterprise expires;

(3) who has committed a grave fault;

(4) for whom the end of the contract of employment or the layoff is a result of a fortuitous event.

“83. An employer who does not give the notice prescribed by section 82, or who gives insufficient notice, must pay to the employee a compensatory indemnity equal to the employee’s regular wages, without taking account of overtime, for a period equal to the period of the notice to which he was entitled.

This indemnity must be paid upon termination of employment or at the beginning of a layoff expected to last more than six months, or at the end of a period of six months in the case of a layoff of indeterminate length, or of a layoff expected to last less than six months but which exceeds this period.

The indemnity to be paid to an employee remunerated mainly on commission is established from the average of his weekly wages, calculated from all the complete periods of pay during the three months preceding the cessation of his employment or his layoff.

“83.1 In the case of an employee who benefits under a collective agreement from recall rights during more than six months, the employer shall be obliged to pay the compensatory indemnity only on the first of the following dates:

- (1) upon expiry of the recall rights of the employee;
- (2) one year after the layoff.

The employee contemplated in the first paragraph shall not be entitled to the compensatory indemnity

(1) if he is recalled to work before the date upon which his employer must pay the indemnity and if subsequently he works for a period equal to or longer than that of the notice prescribed in section 82;

(2) if he is not recalled owing to a fortuitous event.”

32. Section 85 of the said Act is replaced by the following section:

“85. If the employer requires the wearing of a uniform, he must supply it free of charge to an employee who is paid the minimum wage.

The employer cannot require any payment from the employee for the purchase, wearing or use of the uniform which would result in that employee’s receiving less than the minimum wage.”

33. Section 87 of the said Act is replaced by the following section:

“37. At the request of the Commission, when the Commission deems it appropriate, the employer shall deliver over to the employee any informational document on labour standards furnished by the Commission.”

34. Section 88 of the said Act is amended

(1) by inserting the words “in a vacation camp” after the word “employed” in the ninth line of the first paragraph;

(2) by striking out the words “a vacation camp or” in the tenth line of the first paragraph.

35. The said Act is amended by inserting, after section 88, the following section:

“88.1 The Government may, by regulation, exempt one or several categories of employees from the application of section 51.1.”

36. Section 89 of the said Act is amended

(1) by striking out paragraph 5;

(2) by replacing paragraph 6 by the following paragraph:

“(6) the cases and conditions in which an employee is entitled to a leave contemplated in section 81.3, the terms and conditions of application of the leave, the applicable duration, as the case may be, the time when such leave may be taken and, generally, the rights and benefits granted to such an employee where he is or is deemed to be at work or upon his return;”.

37. Section 91 of the said Act is amended by striking out the last paragraph.

38. Section 98 of the said Act is amended by striking out the last paragraph.

39. Section 100 of the said Act is repealed.

40. Section 111 of the said Act is amended by replacing the words “a copy of such putting in default to the employee” in the first and second lines of the second paragraph by the words “a notice to the employee indicating the amount claimed on his behalf”.

41. Section 113 of the said Act is amended by adding the following paragraph:

“The Commission may also exercise the same recourses against the directors of a company as an employee may exercise against them.”

42. Section 116 of the said Act is amended by replacing the word “interrupts” in the second line by the word “suspends”.

43. Section 122 of the said Act is amended by striking out the second paragraph.

44. Section 123 of the said Act is amended

(1) by replacing the words “Sections 14 to 19, 103 to 114, 121, 122, 129a and sections 133 to 135” in the seventh line of the first paragraph by the words “Sections 15 to 20, 118 to 137, 139 to 140, 146.1 and sections 150 to 152”;

(2) by striking out the words “Notwithstanding section 15 of the Labour Code,” at the beginning of the second paragraph;

(3) by replacing the last paragraph by the following paragraph:

“The Commission may represent an employee who is not subject to a collective agreement in proceedings relating to this division.”

45. The said Act is amended by inserting the following section after section 123.1:

“123.2 The presumption contemplated in the first paragraph of section 123 shall continue to apply for at least 20 weeks after the return to work of the employee following a leave contemplated in section 81.3.”

46. Section 124 of the said Act is amended by adding the following paragraph:

“For the purposes of this section, the service of an employee is uninterrupted where fixed term contracts succeed one another without an interruption which gives cause, in the circumstances, to conclude that the contract was not renewed.”

47. Sections 126 and 127 of the said Act are replaced by the following sections:

“126. Where no settlement is reached within 30 days of the filing of the complaint with the Commission, the employee may, within the 30 days which follow, submit his complaint to the labour commissioner general, or mail it to him within the same time. The labour commissioner general shall appoint a labour commissioner to make an inquiry and decide as to the complaint.

“127. The provisions of the Labour Code respecting the labour commissioner general, the labour commissioners, their decisions and the exercise of their jurisdiction, and section 100.12 of such Code apply, adapted as required, except sections 15 to 19 and 118 to 137.”

48. Section 128 of the said Act is amended by replacing the words “the arbitrator” in the first line of each of the first and second paragraphs by the words “the labour commissioner”.

49. Section 129 of the said Act is amended by replacing the words “arbitration award” in the first line by the words “decision of a labour commissioner”.

50. Sections 130 to 135 of the said Act are replaced by the following sections:

“130. The decision of a labour commissioner under this division is without appeal. It shall be binding upon both the employer and the employee.

“131. A labour commissioner must file the original of his decision at the office of the labour commissioner general.

The clerk shall send forthwith a true copy of the decision to the parties and to the Commission.”

51. Schedule I to the said Act is repealed.

52. The English text of the said Act is amended by replacing the words “executive officer” or “executive officers” in sections 43, 54 and 88 by the words “managerial personnel”.

NATIONAL HOLIDAY ACT

53. Section 2 of the National Holiday Act (R.S.Q., chapter F-1.1) is amended by replacing the figure “3” in the third line of the second paragraph by the figure “4”.

54. Section 3 of the said Act is repealed.

55. Section 4 of the said Act is amended

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

“4. The employer must pay to the employee an indemnity equal to the average of his daily wages for the days worked during the complete period of pay preceding 24 June, without taking account of overtime.”;

(2) by adding the following paragraph at the end:

“Notwithstanding the first paragraph, the indemnity paid to an employee remunerated mainly on commission must be equal to the average of his daily wages as established from all the complete periods of pay during the three months preceding 24 June.”

ACT RESPECTING THE MINISTÈRE DE LA MAIN-D'OEUVRE ET DE LA SÉCURITÉ DU
REVENU

56. Section 5.2 of the Act respecting the Ministère de la Main-d'oeuvre et de la Sécurité du revenu (R.S.Q., chapter M-19.1) is replaced by the following section:

“5.2 The Minister, in accordance with the standards that may be established by regulation of the Government, may pay an allowance to a person for maternity, paternity or adoption.

The regulation may prescribe the cases and conditions giving entitlement to the allowance and the terms and conditions of payment.”

ACT TO AMEND THE LABOUR CODE AND VARIOUS LEGISLATION

57. Section 103 of the Act to amend the Labour Code and various legislation (1983, chapter 22) is repealed.

TRANSITIONAL AND FINAL PROVISIONS

58. Except in respect of the standard contemplated in section 81.3 enacted by section 29 of this Act, a collective agreement in force under the Labour Code on the day on which a labour standard prescribed by this Act comes into force shall continue to have effect until its date of expiry, even if one of its provisions contravenes one of the said standards.

The same applies to a collective agreement negotiated according to the Labour Code and which is signed during the ninety days

following the date on which the labour standard comes into force, and to a decree which is adopted, prolonged or renewed within the same period.

The first paragraph applies, adapted as required, to a collective agreement decree until it expires or is prolonged or renewed.

59. The provisions of this Act come into force on (*insert here the date of assent to this Act*), with the exception of section 2, paragraphs 1 and 3 of section 3, sections 5, 10, 14, 17 to 20 and 51, which will come into force on (*insert here the date three months after the date of assent to this Act*).