

FOURTH SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 126

An Act respecting labour standards

(Reprint)

First reading
Second reading
Third reading

M. PIERRE MARC JOHNSON

Ministre du travail et de la main-d'oeuvre

L'ÉDITEUR OFFICIEL DU QUÉBEC

1 9 7 9

EXPLANATORY NOTES

This bill introduces a new act respecting labour standards.

This bill revises and replaces the existing Minimum Wage Act.

A Commission des normes du travail is established to replace the Commission du salaire minimum.

The proposed act contains eight chapters.

Chapters I and II contain definitions peculiar to this act and define the scope of the act.

Chapter III deals with the Commission des normes du travail, describing its structure and functions. The Commission is to have at most seven members, including the chairman, and is to act by way of regulation, not ordinance.

Chapter IV is devoted exclusively to labour standards, and has nine divisions. The first seven regard

— wages

— hours of work

— statutory holidays with pay

— annual leave with pay

— rest periods and miscellaneous leaves

— prior notice and work certificates

— other labour standards.

The eighth division provides that the Government may make regulations regarding, in particular, maternity leaves, and the adaptation of certain of the labour standards already referred to to certain categories of employees in consideration of the special nature of their work.

The ninth division sets out the effects of the labour standards and declares them to be of public order.

Chapter V indicates the recourses available to an employee if his employer disregards his obligations under this bill. It pro-

vides, in particular, for civil recourses, recourses against an illegal dismissal or a dismissal without good and sufficient cause. It also provides the Commission with powers of inquiry for cases of this kind, and the authority, in certain cases, to indemnify an employee whose rights have been disregarded.

Chapter VI empowers the Commission to pay full or partial compensation from its funds to an employee, in the manner provided by regulation, for losses incurred through the bankruptcy of his employer.

Chapter VII deals with offences and the related penalties.

Chapter VIII sets out transitional provisions.

Bill 126

An Act respecting labour standards

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

CHAPTER I

DEFINITIONS

1. In this act, unless the context indicates a different meaning,

(1) “delivery” means the natural or the lawfully, medically induced end of a pregnancy by child-birth, whether or not the child is viable;

(2) “Commission” means the Commission des normes du travail established under section 4;

(3) “consort” means either of a man and a woman who

(a) are married and cohabiting or

(b) are living together as husband and wife and who at the time of the death

(i) had resided together for three years, or for one year if a child was born of their union and

(ii) had publicly been represented as consorts;

(4) “agreement” means an individual contract of employment, a collective agreement within the meaning of paragraph *e* of section 1 of the Labour Code (Revised Statutes, 1964, chapter 141) or any other agreement relating to conditions of employment including a government regulation giving effect thereto;

(5) “decree” means a decree adopted under the Collective Agreement Decrees Act (Revised Statutes, 1964, chapter 143);

(6) “domestic” means an employee in the employ of a natural person whose main function is the performance of domestic duties in the dwelling of that person; this word does not, however, include an employee whose main duty is the care of children, or of a disabled, handicapped or aged person;

(7) “employer” means any person who has work done by an employee;

(8) “Minister” means the Ministre du travail et de la main-d’oeuvre;

(9) “wages” means a remuneration in currency and benefits having a pecuniary value due for the work or services performed by an employee;

(10) “employee” means a person who works for an employer and who is entitled to a wage; that word also includes an employee who is a party to a contract, under which he

(i) undertakes to perform specified work for a person within the scope and in accordance with the methods and means determined by that person;

(ii) 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; and

(iii) 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;

(11) “week” means a period of seven consecutive days from midnight at the beginning of a particular day to midnight at the end of the seventh day;

(12) “continuous service” means 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.

CHAPTER II

SCOPE

2. This act applies to the employee regardless of where he works. It also applies

(1) to the employee who performs work both in Québec and outside Québec for an employer whose residence, domicile, undertaking, head office or office is in Québec;

(2) to the employee domiciled or resident in Québec who performs work outside Québec for an employer contemplated in paragraph 1, provided that, under the law of his place of work, he is not entitled to a minimum wage;

(3) to the government agencies listed in Schedule I.

3. This act does not apply

(1) to an employee employed for the operation of a farm operated

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

(b) by a corporation the principal occupation of which is the operation of that farm with the habitual assistance of not more than three employees;

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

(2) to an employee whose main duty is the care, in a dwelling, of children, or of a disabled, handicapped or aged person, if that work does not serve to procure profit to the employer;

(3) to the employer and the employee governed by the Construction Industry Labour Relations Act (1968, chapter 45), except in respect of a regulation made under paragraph 6 of section 89;

(4) to the employee contemplated in subparagraphs i, ii and iii of paragraph 10 of section 1 if the Government, by regulation pursuant to another act, establishes the wages of that employee or the tariff that is applicable to him;

(5) to a student who works during the school year in an establishment selected by an educational institution pursuant to a job induction programme approved by the Ministère de l'éducation.

CHAPTER III

THE COMMISSION

4. A body is established under the name of "Commission des normes du travail".

5. The Commission shall supervise the implementation and application of labour standards. It shall, in particular, exercise the following functions:

(1) inform the population on matters dealing with labour standards;

(2) supervise the application of labour standards and, where necessary, transmit its recommendations to the Minister;

(3) receive complaints from employees and indemnify them to the extent provided in this act and the regulations;

(4) following the bankruptcy of an employer, compensate his employees in accordance with this act and the regulations.

6. The Commission is a corporation within the meaning of the Civil Code and has the general powers of such a corporation and the special powers conferred upon it by this act.

7. The Commission has its head office at the place determined by the Government; a notice of the location or of any change of location of the head office is published in the *Gazette officielle du Québec*.

The Commission may hold its sittings at any place in Québec.

8. The Commission is composed of not more than seven members, including a chairman, appointed by the Government after consultation with the most representative employer and employee organizations.

9. The chairman of the Commission is appointed for a term of not over five years. The other members are appointed for a term of not over three years.

10. The chairman holds office on a full-time basis. He presides at meetings of the Commission.

He is also the director general of the Commission and, in that capacity, is responsible for the administration and direction of the Commission within the scope of its regulations.

11. The Commission may generally or specially authorize a person to exercise the powers conferred upon it by this act.

12. At the expiry of their term of office, the members of the Commission remain in office until they are replaced or re-appointed.

13. If a member does not complete his term of office, the Government shall appoint a person to replace him for the remainder of his term.

14. If the chairman is absent or unable to act, the Government may appoint a person to replace him temporarily.

15. The Commission shall meet at least once every three months.

16. The majority of the members including the chairman are a quorum of the Commission.

Decisions are taken by the majority of votes; in the case of a tie-vote, the chairman has a casting vote.

17. A decision signed by all the members has the same value as if it had been taken at a regular meeting.

18. Minutes of the sittings of the Commission approved by the latter are authentic, as are copies or extracts certified true by the chairman or the secretary of the Commission.

19. The Government shall determine, as the case may be, the conditions of employment, salaries, additional salaries, allowances and indemnities or social benefits to which the chairman and the other members of the Commission are entitled.

20. The secretary and the members of the personnel of the Commission are appointed and remunerated in accordance with the Civil Service Act (1978, chapter 15).

21. The expenses of the Commission, including the salaries, allowances and indemnities or social benefits of its members and those of its personnel, are paid out of its revenues.

22. No member of the Commission may be prosecuted by reason of an act done in good faith in the performance of his duties.

No extraordinary recourse provided in articles 834 to 850 of the Code of Civil Procedure may be exercised nor any injunction granted against the Commission or its members acting in their official capacity.

23. Two judges of the Court of Appeal may, on a motion, summarily annul any writ, order or injunction issued or granted contrary to section 22.

24. The chairman, on pain of forfeiture of office, shall not have a direct or indirect interest in an undertaking creating a conflict between his personal interest and that of the corporation. However, he shall not be removed from office if such interest devolves to him by succession or gift, provided that he renounces or disposes of it with all possible dispatch.

Every other member of the Commission having a direct or indirect interest in an undertaking must, on pain of forfeiture of office, disclose it in writing to the other members of the Commission and refrain from participating in any decision in connection with the undertaking in which he has that interest.

25. The fiscal period of the Commission ends on 31 March each year.

26. Not later than three months after the end of its fiscal period, the Commission must remit to the Minister a report of its activities for that fiscal period; this report must contain all the information the Minister may require.

The Commission must furnish to the Minister any other information he may require on its operations.

27. The Minister shall table the report of the Commission before the Assemblée nationale, if it is in session, within thirty days of receiving it; if he receives it while it is not sitting, he shall table it within thirty days of the opening of the next session or resumption, as the case may be.

28. The books and accounts of the Commission shall be audited each year by the Auditor General and, in addition, every time the Government so orders.

The report of the Auditor General must accompany the annual report of the Commission.

29. The Commission may, by regulation,

(1) adopt rules of internal management;

(2) establish committees to examine such matters as it may determine;

(3) require an employer or a category of employers it indicates to have a system for the registration of all work governed by the Commission or to keep a register for the entry of the surname, given name, residence and employment of each of his employees, the time at which the work was begun, interrupted, resumed and finished every day, the nature of the work, the wage paid for it and the mode and time of payment, and any other information deemed useful in the application of this act or the regulations;

(4) determine the nature of the claims that give entitlement to the benefits it may pay to an employee following the bankruptcy of an employer, the conditions of eligibility for such

benefits, the amount of such benefits and the terms and conditions of payment of such benefits to the employee;

(5) levy, upon professional employers, an amount not exceeding one per cent of their total wage bill, 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.

30. The following bodies are not subject to the levy contemplated in paragraph 5 of section 29:

- (1) urban communities;
- (2) municipal corporations;
- (3) municipal and intermunicipal transit corporations within the meaning of section 1 of the Act respecting municipal and intermunicipal transit corporations (1977, chapter 64);
- (4) school corporations;
- (5) the School Council of the Island of Montreal;
- (6) fabriques;
- (7) corporations of trustees for the erection of churches;
- (8) establishments, regional councils and foster families contemplated in paragraphs *a*, *f* and *o*, respectively, of section 1 of the Act respecting health services and social services (1971, chapter 48), proportionately to the amounts of money they receive under that act;
- (9) charitable institutions or bodies whose object is to assist, gratuitously and directly, natural persons in need;
- (10) religious institutions;
- (11) educational institutions;
- (12) the Office de la construction du Québec;
- (13) parity committees constituted under the Collective Agreement Decrees Act;
- (14) employers subject to a decree;
- (15) employers of domestics.

31. The regulations contemplated in paragraphs 1 and 2 of section 29 shall be transmitted to the Minister and come into force on the approval of the Government.

32. The regulations contemplated in paragraphs 3 to 5 of section 29 are transmitted to the Minister and submitted to the approval of the Government.

33. A regulation contemplated in section 32 must, before being approved, be preceded by a draft regulation published in the *Gazette officielle du Québec*, with a notice specifying that any objection to its approval must be made to the Minister within sixty days.

34. The Minister may order the holding of an inquiry into the merits of an objection made following a notice provided for in section 33.

35. After the expiry of the delay provided for in section 33 or, as the case may be, after the holding of the inquiry provided for in section 34, the Government may approve the regulation with or without amendment.

36. A regulation contemplated in section 32 and approved by the Government comes into force on the day of the publication in the *Gazette officielle du Québec* of a notice that it has received that approval or, if it has been approved with amendments, on the day of the publication in the *Gazette officielle du Québec* of the regulation as approved, or on any later date mentioned in the notice.

37. Notwithstanding section 33, a regulation of the Commission may be approved without prior publication if the urgency of the situation or the public interest requires its immediate approval.

38. Notwithstanding section 33, the absence of prior publication of a regulation of the Commission does not render that regulation invalid.

39. The Commission may

- (1) ascertain the wage paid to an employee by his employer;
- (2) establish forms to be used by employers and employees;
- (3) establish or fill out the certificate of employment provided for in section 84 when the employer refuses or neglects to do so;
- (4) collect or receive the amounts owing to an employee under this act or a regulation and remit them to him;

(5) accept for an employee, when he consents to it, partial payment of the amounts due to him by his employer, without prejudice to the rights of the employee as to the remainder;

(6) pay the amounts it deems to be due by an employer to an employee under this act or a regulation up to the minimum wage, taking into account, where such is the case, the increases provided for therein;

(7) pay to an employee, following the bankruptcy of his employer, the benefits contemplated in paragraph 4 of section 29;

(8) institute in its own name and on behalf of an employee, where such is the case, proceedings to recover amounts due by the employer under this act or a regulation, notwithstanding any act to the contrary, any opposition or any express or implied waiver by the employee and without having to justify an assignment of debt of the employee;

(9) intervene in its own name and on behalf of an employee, where such is the case, in proceedings relating to the insolvency of the employer;

(10) intervene at any time in an action relating to this act or a regulation;

(11) authorize a mode of payment of wages other than that provided for in section 41;

(12) authorize staggered working hours on a basis other than a weekly basis on the conditions provided for in section 53.

CHAPTER IV

LABOUR STANDARDS

DIVISION I

WAGES

40. The minimum wage payable to an employee shall be determined by regulation of the Government.

41. No benefit having pecuniary value may be taken into account in computing the minimum wage.

42. Wages must be paid in cash in a sealed envelope or by cheque. The payment may be made by bank transfer if so provided in a written agreement or decree.

An employee is deemed not to have received payment of the wages due to him if the cheque delivered to him is not cashable.

43. Wages must be paid at regular intervals of not over sixteen days, or one month in the case of executive officers or employees contemplated in subparagraphs i, ii, iii of paragraph 10 of section 1.

Notwithstanding the first paragraph, an employer may pay an employee in the month following the commencement of his employment.

44. The wages of an employee must be paid directly to him, at his place of employment and on a working day, except where the payment is made by bank transfer or is sent by mail.

The wages of an employee may also, at his written request, be remitted to a third person.

45. If the usual day of payment of wages falls on a general statutory holiday, the wages are paid to the employee on the working day preceding that day.

46. The employer must remit to the employee, together with his wages, a pay sheet containing sufficient information to enable the employee to verify the computation of his wages. That pay sheet must, in particular, include the following particulars:

- (1) the name of his employer;
- (2) the surname and given 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 with the applicable premium;
- (7) the nature and amount of the bonuses, indemnities or allowances that are being paid;
- (8) the hourly 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.

The Government, by regulation, may require any other particular it deems pertinent. It may also exempt a category of employers from the application of any of the above particulars.

47. No signing formality other than that establishing that the sum remitted to the employee corresponds to the amount of net wages indicated on the pay sheet may be required upon payment of the wages.

48. Acceptance of a pay sheet by an employee does not entail his renunciation of the payment of all or part of the wages that are due to him.

49. No employer may make deductions from wages unless he is required to do so pursuant to an act, a regulation, a court order, a labour agreement or a decree, or unless he is authorized to do so in writing by the employee.

The employee may at all times revoke that authorization except where it pertains to membership in a group insurance plan, or a supplemental pension plan within the meaning of the Supplemental Pension Plans Act (1965, 1st session, chapter 25). The employer shall remit the sums so withheld to their intended receiver.

50. Any gratuity paid directly or indirectly by a patron to an employee belongs to him of right and does not form part of the wages that are otherwise due to him.

Any gratuity collected by the employer shall be remitted to the employee. The word "gratuity" includes the service charge added to the patron's bill.

51. The maximum amount that an employer may require for room and board from one of his employees is that which is fixed by regulation of the Government.

DIVISION II

HOURS OF WORK

52. For the purposes of computing overtime, the regular workweek is forty-four hours except in the cases where it is fixed by regulation of the Government.

53. An employer may, with the authorization of the Commission, stagger the working-hours of his employees on a basis other than a weekly basis, provided that the average of the working-hours is equivalent to the norm provided in the act or the regulations.

A collective agreement or a decree may provide, on the same conditions, without the authorization provided for under the first

paragraph being necessary, for the staggering of working hours on a basis other than a weekly basis.

54. The number of hours of the regular workweek determined in section 52 does not apply to the following employees:

(1) the consort of the employer, his ascendants and descendants and the employer's ascendants and descendants;

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

(3) an executive officer of an undertaking;

(4) an employee who works outside an establishment whose working-hours cannot be controlled;

(5) an employee assigned to harvesting, canning, packaging and freezing fruit and vegetables during the harvesting period;

(6) an employee of a fishing, fish processing or fish canning industry;

(7) a farm worker;

(8) a caretaker.

55. Any work performed in addition to the regular workweek entails a premium of 50% of the prevailing hourly wage paid to the employee except premiums computed on an hourly basis.

56. For the purposes of computing overtime, annual leave and general statutory holidays with pay are counted as days of work.

57. An employee who is at his place of employment and is required to wait for work to be assigned to him is deemed to be working.

58. An employee who reports for work at his place of employment at the formal request of his employer or in the regular course of his employment and who works fewer than three consecutive hours except in the case of a fortuitous event is entitled to an indemnity equal to three hours' wages at the prevailing hourly rate except where the application of section 55 entitles him to a greater amount.

This provision does not apply in the case where the nature of the work or the conditions of execution require the employee to be present several times in the same day, for less than three hours each time, such as that of a school crossing guard or a bus driver.

Neither does it apply where the nature of the work or the conditions of execution are such that it is ordinarily completed within a three hour period, such as the work of a school monitor or ushers.

59. An employee is deemed to be at work during the coffee break.

DIVISION III

GENERAL STATUTORY HOLIDAYS AND NON-WORKING DAYS WITH PAY

60. When falling on a working day, the following days are statutory general holidays:

- (1) 1 January;
- (2) 25 December;
- (3) four other days fixed by regulation of the Government.

However, this section does not apply to employees covered by a collective agreement or a decree containing at least six general statutory holidays and non-working days with pay, in addition to the National Holiday.

61. No person may reduce the wages of an employee by reason of the fact that a day indicated in section 60 is a non-working day.

62. The employer shall pay to the employee remunerated on a time basis, on the basis of production or on any other basis an indemnity equal to the average of the daily wages for the two weeks preceding that holiday.

63. If an employee must work on one of the days indicated in section 60, the employer, in addition to paying to the employee working on that general holiday the wages for the work done, must pay to such employee an indemnity equal to his wages for a regular day of work, or grant him a compensatory holiday of one day. In this case, the holiday must be taken within three weeks before or after that day, unless a collective agreement or a decree provides for a longer period.

64. If an employee is on annual leave on one of the days contemplated in section 60, the employer shall pay him the indemnity provided for in section 62 or grant him a compensatory holiday of one day on a date agreed upon between the employer and the employee or fixed by a collective agreement or a decree.

65. To benefit by a general statutory holiday contemplated in section 60, the employee must be credited with 60 days of uninterrupted service in the undertaking and not be absent from work without the employer's authorization or without valid cause on the day preceding or on the day following that holiday.

DIVISION IV

ANNUAL LEAVE WITH PAY

66. The reference year is a period of twelve consecutive months during which an employee progressively acquires entitlement to an annual leave.

That period extends from 1 May of the preceding year to 30 April of the current year unless an agreement or decree fixes a different starting date for that period.

67. An employee who, at the end of a reference year, is credited with less than one year of uninterrupted service with the same employer during that period, is entitled to an uninterrupted leave for a duration determined at the rate of one working day for each month of uninterrupted service, for a total leave not exceeding two weeks.

68. An employee who, at the end of a reference year, is credited with one year of uninterrupted service with the same employer during that period is entitled to an annual leave of a minimum duration of two weeks.

69. An employee who, at the end of a reference year, is credited with ten years of uninterrupted service with the same employer, is entitled to an annual leave for a minimum duration of three weeks, two of which may be consecutive.

70. The annual leave must be taken within twelve months following the end of the reference year.

71. The annual leave may be divided into two periods where so requested by the employee unless a special provision is stipulated in a collective agreement or decree or the employer closes his establishment during the annual leave period.

A leave not exceeding one week shall not be divided.

72. An employee is entitled to know the date of his annual leave at least four weeks in advance.

73. Employers are prohibited from replacing a leave contemplated in section 67, 68 or 69 by a compensatory indemnity.

At the request of the employee, the third week of leave may, however, be replaced by a compensatory indemnity if the establishment closes for two weeks on the occasion of the annual leave.

74. The indemnity relating to the annual leave of the employee contemplated in sections 67 and 68 is equal, in the case of an employee paid on an hourly basis or on the basis of production, to 4% of the gross wages during the reference year. In the case of the employee contemplated in section 69, the indemnity is equal to 6% of the gross wages of the employee during the reference year.

The indemnity relating to the annual leave of the employee contemplated in sections 68 and 69 and paid otherwise than on an hourly basis or on the basis of production, is equal to the wages that that employee would have received had he been working during his leave. The employee contemplated in section 67 is entitled to an indemnity equal to the wages corresponding to one day of work per month of uninterrupted service up to two weeks.

Should an employee be absent owing to sickness or accident, or on maternity 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, as the case may be, to twice or three times the weekly average of the wage earned during the period of work.

75. The indemnity pertaining to the annual leave of an employee must be paid to him before the beginning of the leave.

76. If a contract of employment is cancelled before the employee is able to benefit by all the days of leave to which he is entitled, the employee shall receive, in addition to the compensatory indemnity determined in accordance with section 74 and attaching to the fraction of the leave that he did not enjoy, an indemnity equal to 4% or 6%, as the case may be, of the gross wages earned during the current reference year.

77. Sections 66 to 76 do not apply to the following persons:

(1) the consort of the employer, his ascendants and descendants and the ascendants and descendants of the employer;

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

(3) a salesman within the meaning of paragraph *b* of section 1 of the Real Estate Brokerage Act (Revised Statutes, 1964, chapter 267), entirely remunerated on commission;

(4) a salesman within the meaning of paragraph 12 of section 1 of the Securities Act (Revised Statutes, 1964, chapter 274), entirely remunerated on commission;

(5) an insurance agent within the meaning of the Act respecting insurance (1974, chapter 70), entirely remunerated on commission;

(6) a supernumerary employee during the harvesting period;

(7) a trainee within the framework of a vocational training or induction programme recognized by law.

DIVISION V

REST PERIODS AND MISCELLANEOUS LEAVES

78. Subject to the application of paragraph 12 of section 39 or of section 53, an employee is entitled to a weekly minimum rest period of twenty-four consecutive hours.

In the case of a farm worker, that day of rest may be postponed to the following week.

79. Unless otherwise provided in a collective agreement or decree, an employee is allowed a rest period of thirty minutes, for meals, for a period of five consecutive hours of work.

That period shall be remunerated if the employee cannot leave his place of work.

80. An employee may be absent from work for one day without reduction of wages by reason of the death or the funeral of the person to whom he is married or with whom he is living as husband and wife within the meaning of subparagraph *b* of paragraph 3 of section 1, or of his child, father, mother, brother or sister. He may also be absent from work, without pay, for three more days on such occasion.

81. An employee may be absent from work for one day without reduction of wages, on his wedding day.

An employee may also be absent from work, without pay, on the the wedding day of one of his children, and for two days at the birth or adoption of a child.

DIVISION VI

PRIOR NOTICE AND WORK CERTIFICATE

82. Notwithstanding article 1668 of the Civil Code and except in the case of a contract for a fixed term or for a specific

undertaking, an employee who is credited with three months or over of uninterrupted service with the same employer is entitled to a prior notice in writing before being dismissed.

This prior notice shall be of one week if the employee is credited with under 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 over of uninterrupted service.

This provision does not apply in the case of executive officers.

83. Except in the case of grave fault of the employee or of a fortuitous event, an employer failing to give such prior notice must pay to the employee, at the time his employment terminates, a compensatory indemnity equal to the employee's wages for a period equal to the period of the prior notice.

84. At the expiry of the contract of employment, an employee may require his employer to issue to him a work certificate in which the following information, and only the following information, is set forth: the nature and the duration of his employment, the dates on which his employment began and terminated, and the name and address of the employer. The certificate shall not carry any mention of the quality of the work or the conduct of the employee.

DIVISION VII

OTHER LABOUR STANDARDS

85. If the employer requires the wearing of a uniform, he shall not deduct any amount from the minimum wage for the purchase, wearing or care of that uniform.

86. The labour standards relating to various premiums, indemnities and allowances and to tools, showers, cloakrooms and rest areas are the standards established by regulation of the Government.

87. At the request of the employee, the employer shall furnish him with the informational documents on labour standards sent to him by the Commission.

DIVISION VIII

REGULATIONS

88. The Government may make regulations exempting such category or categories of employees as it may designate from the whole or a part of the application of Division I of Chapter IV, for such time and on such conditions as it may fix, namely, executive officers, employees on commission, farm workers, employees engaged in logging operations, saw mills and public works, caretakers, employees who habitually receive gratuities, employees contemplated by subparagraphs i, ii and iii of paragraph 10 of section 1, students employed in in a social or community non-profit organization, such as a vacation camp or a recreational organization, domestics, and trainees under a programme of vocational training or induction recognized by law.

The Government may also, as the case may be, fix standards different from those provided in Division I of Chapter IV for the employees contemplated in the first paragraph.

89. The Government, by regulation, may fix labour standards respecting the following matters:

(1) the minimum wage, which may be established on a time basis, a production basis or any other basis;

(2) pay sheets;

(3) the maximum amount that may be required of an employee for bed and board;

(4) the standard workweek of employees, particularly that of

(a) domestics;

(b) caretakers;

(c) employees engaged in the retail food trade;

(d) employees engaged in logging operations;

(e) employees working in saw mills;

(f) employees working at public works;

(g) employees working in isolated areas that are inaccessible by motor roads forming part of the road network of Québec;

(h) various categories of workers carrying out work in the territory described in the James Bay Region Development Act (1971, chapter 34) under the authority of the Société de développement de la Baie James;

(5) general statutory holidays with pay;

(6) the right to a maternity leave and, as the case may be, the indemnity attached to such leave, the terms and conditions

of application, the duration and distribution of such leave and, generally, the rights and benefits granted to a pregnant employee where she is or is deemed to be at work;

(7) various premiums, indemnities and allowances;

(8) tools, showers, cloakrooms and rest areas.

90. The Government may, by regulation, wholly or partly exempt certain establishments or categories of establishments for physical, mental or social re-education from this act and the regulations and, as the case may be, fix labour standards applicable to the persons working in them.

91. The standards contemplated in sections 88 to 90 may vary according to the field of activity and the type of work.

92. Sections 33 to 38 apply *mutatis mutandis* to the regulations made by the Government under this division.

DIVISION IX

EFFECT OF LABOUR STANDARDS

93. Subject to any exception allowed by this act, the labour standards contained in this act and the regulations are of public order.

In an agreement or decree, any provision that contravenes a labour standard or that is inferior thereto is null *pleno jure*.

94. Notwithstanding section 93, an agreement may grant an employee a more advantageous condition of employment than required in a standard prescribed by this act or the regulations.

95. A professional employer who enters into a contract with a subcontractor, directly or through an intermediary, is responsible jointly and severally with that subcontractor and that intermediary for the pecuniary obligations fixed by this act or the regulations and for the deductions owed to the Commission.

96. The alienation or concession of the whole or a part of an undertaking otherwise than by judicial sale does not invalidate any civil claim arising from the application of this act or a regulation which is not paid at the time of such alienation or concession. The former employer and the new employer are bound jointly and severally in respect of that claim.

97. The alienation or concession in whole or in part of the undertaking, or the modification of its juridical structure, namely

by amalgamation, division or otherwise, does not affect the continuity of the application of the labour standards.

CHAPTER V

RECOURSES

DIVISION I

CIVIL RECOURSES

98. Where the employer fails to pay to an employee the wage owing to him, the Commission, on behalf of that employee, may claim the unpaid wage from such employer.

The Commission cannot exercise this claim for a greater amount, however, than what the employee would have been entitled to for the same period if he had been entitled to twice the minimum wage in force on each day he worked.

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.

100. The employee retains the right to exercise himself, if necessary, his recourse for that part of his wages which, where that is the case, exceeds the amount claimed by the Commission under section 98.

101. Any settlement of a claim between an employer and an employee which involves a reduction of the amount claimed is null.

102. Subject to section 123, an employee who believes that one of his rights under this act or a regulation has been violated may present a complaint in writing to the Commission.

If an employee is subject to a collective agreement or a decree, he must then prove to the Commission that he has used up the recourses arising out of that agreement or that decree.

103. The Commission shall not, during the inquiry, disclose the identity of an employee who has filed a complaint, unless the latter consents to it.

104. On receipt of a complaint, the Commission shall make an inquiry with due dispatch.

105. The Commission may also make an inquiry of its own initiative.

106. The Commission may refuse to proceed with an inquiry if it finds that the complaint is frivolous or made in bad faith.

107. Where the Commission refuses to proceed with an inquiry under section 106 or where it finds that the complaint is groundless, it shall give notice of its decision to the employee by registered mail, together with the reasons therefor.

108. The Commission, or any person it may designate generally or specially for that purpose, is vested, for the purposes of an inquiry contemplated in sections 104 and 105, with the powers and immunity granted to commissioners appointed under the Public Inquiry Commission Act (Revised Statutes, 1964, chapter 11), except the power to impose imprisonment.

The Commission may authorize a person generally or specially to inquire into a matter relating to this act or a regulation. Such person must, upon request, present a certificate of his authority signed by the chairman.

109. In proceeding with an inquiry, the Commission or any person designated by it for such purpose may

(1) enter at any reasonable time any place of work or establishment of an employer and make an inspection thereof; such inspection may include the examination of registers, books, accounts, vouchers and other documents;

(2) require any information regarding the application of this act or a regulation, and the production of any document related thereto.

110. A document contemplated in section 109 which has been examined by the Commission or a person designated by it, or which has been produced to either of them, may be copied or photocopied. Any copy or photocopy of such document certified true to the original by the chairman or that person is admissible as evidence and has the same value as the original.

111. Where, following an inquiry, the Commission considers that an amount of money is due to an employee in accordance with this act or the regulations, it shall put the employer in default to pay such amount to the Commission within twenty days of the mailing of such putting in default by registered mail.

The Commission shall at the same time send a copy of such putting in default to the employee.

112. If the employer fails to pay such amount within the time fixed in section 111, the Commission may, of its own authority, indemnify the employee to the extent provided for in paragraph 6 of section 39.

If the Commission indemnifies the employee, it is thenceforth substituted in all the rights of the employee up to the amount thus paid.

113. The Commission may take the appropriate action on behalf of the employee if he fails to inform the Commission of his intention to proceed himself at the expiry of the time provided for in section 111.

114. Where it exercises the recourses provided for in sections 112 and 113, the Commission may claim, in addition to the amount due under this act or a regulation, an amount equal to 20% of such amount. This additional amount of 20% belongs entirely to the Commission.

The amount due to the employee bears interest at the rate fixed by regulation under section 28 of the Revenue Department Act (1972, chapter 22), from the putting in default contemplated in section 111.

115. A civil action brought under this act or a regulation is prescribed by one year from each due date.

This prescription runs only from 1 May following the date of execution of the work in respect of employees engaged in logging operations.

116. A notice of inquiry sent by the Commission to the employer by registered mail interrupts prescription in respect of all his employees for six months from the date of mailing.

117. A civil action for the recovery of a deduction is prescribed by five years from the due date.

118. In the case of a false entry in the required register, or in the system of registration, or of a secret rebate or any other fraud, prescription runs against the Commission's recourses only from the date on which the Commission becomes aware of the fraud.

119. The recourses of several employees against the same employer may be joined in the same suit, whether it is instituted by the employees or by the Commission, and the total amount claimed determines the jurisdiction of the court, both in first instance and in appeal.

120. After being put in default by the Commission, an employer cannot validly discharge the amounts forming the object of the claim except by remitting them to the Commission. This provision does not apply in the case of an action brought by the employee himself.

121. Subject to section 112 and to the first paragraph of section 114, the Commission shall remit to the employee the amount it collects by exercising his recourse.

DIVISION II

RECOURSE AGAINST ILLEGAL DISMISSALS

122. No employer or his agent may dismiss, suspend or transfer an employee

(1) on the ground that such employee has exercised one of his rights under this act or a regulation;

(2) on the ground that such employee has given information to the Commission or one of its representatives on the application of the labour standards or that he has given evidence in a proceeding related thereto;

(3) on the ground that a seizure by garnishment has been or may be effected against such employee;

(4) on the ground that such employee is pregnant;

(5) for the purpose of evading the application of this act or a regulation.

A pregnant employee may request her employer to transfer her by presenting a medical certificate attesting that her conditions of employment are physically dangerous to her or her unborn child.

An employer must of his own initiative transfer a pregnant employee if her conditions of employment are physically dangerous to her or her unborn child. The employee may refuse the transfer by presenting a medical certificate attesting that her conditions of employment are not dangerous as alleged.

123. Every employee who believes that he has been dismissed, suspended or transferred for one of the reasons mentioned in section 122 and who wishes to vindicate his rights, shall do so before a labour commissioner appointed under the Labour Code, as in the case of a dismissal, suspension or transfer by reason of the exercise by an employee of one of his rights under the Labour Code. Sections 14 to 19, 103 to 114, 121, 122, 129a and sections 133 to 135 of the Labour Code then apply, *mutatis mutandis*.

Notwithstanding section 15 of the Labour Code, the delay to file a complaint with the labour commissioner-general is 30 days. If the complaint is submitted within that delay to the Commission or the Minister rather than to the labour commissioner-general, non-compliance with the hereinabove delay cannot be invoked against the complainant.

A labour commissioner shall not order the reinstatement of a domestic; he may, however, order the employer to pay to the domestic, as an indemnity, the equivalent of the wage and other benefits of which he was deprived due to dismissal for a maximum period of three months.

The Commission may intervene before the labour commissioner.

DIVISION III

RECOURSE AGAINST DISMISSALS NOT MADE FOR GOOD AND SUFFICIENT CAUSE

124. An employee credited with five years of uninterrupted service with one employer who believes that he has not been dismissed for a good and sufficient cause may present his complaint in writing to the Commission within 30 days of his dismissal, except where a remedial procedure other than the recourse in damages is provided elsewhere in this act, in another act or in an agreement.

125. Upon receiving the complaint, the Commission may appoint a person who shall endeavour to settle the complaint to the satisfaction of the interested parties.

The Commission may require from the employer a writing containing the reasons for dismissing the employee. It must provide a copy of this writing to the employee, on demand.

126. Where no settlement is reached within 30 days of the filing of the complaint with the Commission, the employee may apply to the Commission to have his complaint referred to arbitration.

The Commission shall appoint an arbitrator whose name appears on the list provided for in the second paragraph of section 66 of the Labour Code.

127. Sections 88*a* to 88*i*, 88*k* and 88*l*, 88*n* to 88*p*, 89, 89*c* and 89*d* and 121 and 122 of the Labour Code apply, *mutatis mutandis*, to the arbitrator so appointed.

128. Where the arbitrator considers that the employee has not been dismissed for good and sufficient cause, he may

(1) order the employer to reinstate the employee;

(2) order the employer to pay to the employee an indemnity up to a maximum equivalent to the wage he would normally have earned had he not been dismissed;

(3) render any other decision he believes fair and reasonable, taking into account all the circumstances of the matter.

However, in the case of a domestic, the arbitrator may order the payment to the employee of only an indemnity corresponding to the wage and other benefits of which he was deprived due to dismissal up to a maximum period of three months.

129. The arbitration award must state the grounds on which it is based and be rendered in writing.

130. The arbitrator must render his award within 90 days of his appointment, unless the parties consent in writing before the expiry of that period to grant an additional period of a precise number of days.

131. The arbitrator shall file that award in duplicate or in two copies true to the original with the Commission and, at the same time, send a copy to the employer and to the employee.

132. The arbitrator is not entitled to any fees or expenses unless he renders his award within a period in accordance with section 130 and he produces to the employee and employer proof that the award has been sent to the Commission.

133. The arbitrator must keep the record of arbitration for two years from the filing of the award.

134. The secretary or, failing him, a person duly authorized by the Commission may certify true any award filed in accordance with section 131.

135. The fees and expenses of the arbitrator shall be assumed jointly and in equal shares by the employer and the employee in accordance with the tariff established by the regulation made under section 91 of the Labour Code.

In the case of a domestic, the fees and expenses shall be assumed by the Commission.

CHAPTER VI

BANKRUPTCY

136. The Commission may, out of its funds and in the manner provided for by a regulation made under paragraph 4 of section 29, compensate an employee for the whole or part of the loss of wages or of any other pecuniary benefit accruing to him under this act or a regulation, where he has incurred such loss on account of the bankruptcy of his employer.

137. For the application of this chapter, an employer is bankrupt where a receiving order is made against him under the Bankruptcy Act (Revised Statutes of Canada, 1970, chapter B-3), where he makes an assignment of his property within the meaning of that act and, if it is a corporation, where a winding-up order is made against it under the Act respecting the winding-up of insolvent companies (Revised Statutes of Canada, 1970, chapter W-10), for insolvency within the meaning of the said act.

138. The Commission, where compensating an employee in the event of a bankruptcy, is subrogated in all his rights up to the amount so paid.

CHAPTER VII

OFFENCES AND PENALTIES

139. Every employer is guilty of an offence and liable, in addition to the costs, to a fine of \$200 to \$500 and, for every subsequent offence within two years, to a fine of \$500 to \$3 000, who

- (1) knowingly destroys, alters or falsifies
 - (a) a register;
 - (b) the registration system;
 - (c) a document dealing with the carrying out of this act or a regulation;
- (2) fails, neglects or refuses to keep a document contemplated in paragraph 1.

140. Every person is guilty of an offence and liable, in addition to the costs, to a fine of \$200 to \$500 and, for every subsequent offence within two years, to a fine of \$500 to \$3 000, who

- (1) hinders in any way the Commission or any person authorized by it in the discharge of its duties;

- (2) deceives it by concealment or false declaration;
- (3) refuses to give it any information or document it is entitled to obtain under this act;
- (4) conceals a document or anything related to an inquiry;
- (5) is a party to an agreement stipulating conditions of employment inferior to labour standards determined under this act or the regulations; or
- (6) contravenes any other provision of this act or the regulations.

141. Every person who attempts to commit an offence contemplated in sections 139 and 140, or aids or incites another person to commit an offence against this act or a regulation, is guilty of an offence and liable to the penalties provided for such offence.

142. Where a corporation commits an offence, every officer, director, employee or agent of that corporation who has prescribed or authorized the perpetration of the offence or agreed or was a party thereto, is deemed to be a party to the offence.

143. Proceedings under this act are brought by the Attorney General or any person generally or specially authorized by him in writing for that purpose; the Summary Convictions Act (Revised Statutes, 1964, chapter 35) applies to such proceedings.

144. Penal proceedings must be instituted within one year after the Commission has become aware of the offence.

145. The fines collected pursuant to a judgment shall be paid to the Commission.

146. No evidence shall be permitted in view of establishing that any action or suit contemplated by this act was brought following upon the complaint of an informer, or of discovering the identity of an informer.

147. For the application of this act, the expression "by a person entrusted with supervising the application of a statute of the province of Québec or a regulation made thereunder" mentioned in section 28a of the Summary Convictions Act includes a person designated by the Commission for that purpose.

CHAPTER VIII

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

148. This act replaces the Minimum Wage Act (Revised Statutes, 1964, chapter 144).

149. In any act, regulation, ordinance or proclamation and in any order in council, contract or other document, any reference to the Minimum Wage Act is deemed to be a reference to this act or to the equivalent provision of this act.

150. Wherever the expression "Minimum Wage Commission" occurs in this act, a regulation, ordinance, proclamation, order in council, contract or any other document, it means the "Commission des normes du travail".

151. Every regulation made and every resolution adopted by the Commission du salaire minimum remains in force, except where it is inconsistent with this act, until it is repealed, amended or replaced by a regulation or resolution of the Commission des normes du travail.

152. Ordinances adopted by the Commission du salaire minimum concerning matters which may be the object of a regulation under sections 88 and 89 remain in force, in respect of matters that can be regulated, until they are repealed, amended or replaced by a regulation made under the said sections. Such ordinances have, for the purposes of this act, the same value and effect as a regulation made under this act.

153. The Commission des normes du travail succeeds the Commission du salaire minimum and, for that purpose, acquires the rights and assumes the liabilities of that body.

154. Every matter pending before the Commission du salaire minimum and every case not yet prescribed under the provisions of the Minimum Wage Act at the time the latter is replaced, is continued and decided without continuance of suit, in accordance with this act, by the Commission des normes du travail.

155. The members of the personnel of the Commission du salaire minimum in office on (*insert here the date of the day preceding that of the coming into force of this section*) become, without other formality, the members of the personnel of the Commission des normes du travail.

156. Notwithstanding section 8, a commissioner of the Commission du salaire minimum who, on (*insert here the date of*

the day preceding that of the coming into force of this section), is appointed a part-time member of the Commission des normes du travail may, by giving notice to the Commission administrative du régime de retraite, continue to contribute to the pension plan applicable to him on the basis of the salary he would receive if he held office on a fulltime basis.

157. Except in respect of what concerns minimum wage and maternity leave, which applies from (*insert here the date of the coming into force of section 89 of Bill 126*), a collective agreement in force pursuant to the Labour Code on (*insert here the date of the coming into force of Bill 126*) continues to have effect until it expires or is renewed, even where it fails to include any of the labour standards adopted under this act or where any of its provisions is contrary to any of such standards. On the last mentioned date, section 47 of the Labour Code does not apply or the agreement is not renewed except in respect of those stipulations of the agreement that conform to this act.

The first and second paragraphs apply, *mutatis mutandis*, to a decree in force on (*insert here the date of the coming into force of this section*).

158. This act applies to employees who exercise functions that were not subject to an order adopted pursuant to the Minimum Wage Act from the coming into force of the regulations made under the second paragraph of section 88 and paragraph 4 of section 89 respecting them.

However, the provisions relating to maternity leave apply from (*insert here the date of the coming into force of this section*).

159. Article 294a of the Code of Civil Procedure, enacted by section 2 of chapter 84 of the statutes of 1968, replaced by section 21 of chapter 83 of the statutes of 1975 and amended by section 12 of chapter 73 of the statutes of 1977, is again amended by replacing the third paragraph of article 294a by the following paragraph:

“This article applies, *mutatis mutandis*:

(a) to the report of a financial institution on the state of the deposits and investments of a person;

(b) to the report of a member of the Sûreté, of a municipal policeman or of a special constable, as defined in the Police Act (1968, chapter 17);

(c) to the report of the Commission des normes du travail or of any person appointed by it, respecting the application of the

labour standards enacted by the Act respecting labour standards (1979, chapter *insert here the chapter number of Bill 126*)."

160. Section 16 of the Collective Agreement Decrees Act (Revised Statutes, 1964, chapter 143) is amended by replacing the second paragraph by the following paragraph:

"The Lieutenant-Governor in Council may, however, order that the observance of a decree be supervised and ensured by an already-existing committee, if the latter consents thereto, or by the Commission des normes du travail."

161. Section 23*a* of the said act, enacted by section 2 of chapter 49 of the statutes of 1969, is amended by adding at the end the following paragraph:

"The Minister may appoint the Commission des normes du travail to act as administrator in such case."

162. Section 63 of the Manpower Vocational Training and Qualification Act (1969, chapter 51) is repealed.

163. The Weekly Day of Rest Act (Revised Statutes, 1964, chapter 145) is repealed.

164. The Act respecting the Limiting of Working Hours (Revised Statutes, 1941, chapter 165) is repealed.

165. The Industrial and Commercial Establishments Act (Revised Statutes, 1964, chapter 150) is amended:

- (1) by striking out the second paragraph of section 15;
- (2) by striking out the third paragraph of section 18.

166. The National Holiday Act (1978, chapter 5) is amended:
(*a*) by replacing section 4 by the following section:

"**4.** Every employer must pay to an employee remunerated on a time basis or on the basis of production, an indemnity equal to the average of the daily wages of the two weeks preceding the 24th of June.";

(*b*) by replacing section 5 by the following section:

"**5.** In any establishment or service where, by reason of the nature of its activities, work is not interrupted on the 24th of June, the employer, in addition to paying to the employee working on the 24th of June the wages for the work done, must pay to such employee an indemnity provided for in section 4, or grant him a

compensatory holiday of one day. In the latter case, the holiday must be taken on the working day preceding or following the 24th of June."

(c) by replacing the second paragraph of section 6 by the following paragraph:

"Where the employee is remunerated on a time basis or on the basis of production, the employer must grant him a compensatory holiday or pay him the indemnity provided for in section 4.";

(d) by replacing section 9 by the following section:

"9. Any person who fails to comply with any provision of this act is guilty of an offence and is liable, in addition to costs, to a fine of \$200 to \$500.

Sections 139 to 147 of the Act respecting labour standards (1979, chapter *insert here the chapter number of Bill 126*) apply, *mutatis mutandis*.";

(e) by adding after section 17 the following sections:

"17a. For the application of this act, section 5 and sections 98 to 123 of the Act respecting labour standards apply, *mutatis mutandis*.

"17b. The Ministre du travail et de la main-d'oeuvre is responsible for the application of this act."

167. The Labour and Manpower Department Act (1968, chapter 43) is amended:

(a) by adding, after section 5, the following sections:

"5a. The Minister may, in respect of any agency indicated in Schedule I,

(a) require it to make, for any other agency mentioned therein, the deduction of any sum of money established by a by-law of that agency; the agency making the deduction for another agency may exact from the latter the costs incurred for that operation;

(b) require it to transmit to him statistical or documentary data on the working milieu or any other information he considers pertinent on the working milieu;

(c) impose on more than one agency the use of common forms for the gathering of information required pursuant to an act or a regulation.

Every agency contemplated in Schedule I is required to comply with a request from the Minister made under the first paragraph.

For the execution of the mandate conferred on it, that agency has the same powers as the agency on behalf of which it is acting.

"5b. The Minister may pay an allowance to a female employee who is absent from work on maternity leave in accordance with the standards that may be established by government regulation."

168. The said act is amended by adding after section 19, the following schedule:

"SCHEDULE I

Commission des normes du travail

Commission des accidents du travail

Office de la construction du Québec

Régie des entreprises de construction du Québec

A parity committee established under the Collective Agreement Decrees Act."

||**169.** The Government may authorize the Ministre des finances to pay or advance to the Commission the sums necessary to pay the salaries, allowances and indemnities or social benefits of its members and personnel and the other expenses necessary for the application of this act. To repay these sums, the Commission must pay the Ministre des finances out of its revenue.||

170. The Minister is responsible for the application of this act.

171. This act will come into force on the date to be fixed by proclamation of the Government, except the provisions excluded by that proclamation, which will come into force wholly or in part on any later date that may be fixed by proclamation of the Government.

SCHEDULE I

Québec Sugar Refinery

Régie du Grand-Théâtre

Régie de la Place des Arts

Société de cartographie du Québec

Société générale de financement and its subsidiaries

Sidbec and its subsidiaries

Société nationale de l'amiante and its subsidiaries

Société parc-autos du Québec métropolitain

Société québécoise d'exploration minière

Société québécoise d'initiatives agro-alimentaires

Société québécoise d'initiatives pétrolières

Société de récupération, d'exploitation et de développement forestier du Québec.