

1988, chapter 35

**AN ACT TO AMEND THE ACT RESPECTING LABOUR RELATIONS,
VOCATIONAL TRAINING AND MANPOWER MANAGEMENT IN THE
CONSTRUCTION INDUSTRY AND THE ACT RESPECTING
MANPOWER VOCATIONAL TRAINING AND QUALIFICATION**

Bill 31

Introduced by Mr Pierre Paradis, Minister of Labour and Minister of Manpower and Income Security

Introduced 10 May 1988

Passage in principle 6 June 1988

Passage 15 June 1988

Assented to 17 June 1988

Coming into force: 17 June 1988, except section 1, paragraph 4 of section 5, section 10, paragraph 2 of section 13, section 15, section 18 and section 21, which come into force on 1 January 1989

Acts amended:

Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20)

Act respecting manpower vocational training and qualification (R.S.Q., chapter F-5)



CHAPTER 35

An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry and the Act respecting manpower vocational training and qualification

[Assented to 17 June 1988]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. R-20, s. 1,
am. **1.** Section 1 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20) is amended

(1) by inserting, after paragraph *k*, the following paragraph:

“(k.1) “independent contractor”: a contractor holding a specialized contractor’s licence issued under the Act respecting building contractors vocational qualifications (R.S.Q., chapter Q-1), who carries out personally, for others and without the assistance of employees,

i. construction work defined in this Act, if the licence pertains to the “Heavy equipment contractor” or “Excavation and earthwork contractor” subcategories;

ii. maintenance, repair and minor renovation work defined in this Act, if the licence pertains to any other subcategory;”;

(2) by replacing the words “does production work in an establishment” in the third line of paragraph *s* by the words “has been doing production work in an establishment for at least six months”;

(3) by striking out paragraph *u*.

c. R-20,
s. 4.1, am.

2. Section 4.1 of the said Act is amended by replacing the words “established by regulation of the Government” in the second and third lines of the first paragraph by the words “it establishes by regulation which requires the approval of the Government”.

c. R-20, s. 5,
am.

3. Section 5 of the said Act is amended by replacing the words “established by regulation of the Government” in the third line of the third paragraph by the words “it establishes by regulation which requires the approval of the Government”.

c. R-20,
s. 7.2,
added

4. The said Act is amended by inserting, after section 7.1, the following section:

Cooperation

“7.2 Every person involved in any construction work shall take the necessary means to enable the Commission and any person authorized by it for that purpose to exercise the powers provided for in section 7.1.”

c. R-20,
s. 19, am.

5. Section 19 of the said Act is amended

(1) by inserting the words “and by employees replacing them temporarily,” in the first line of subparagraph 2 of the first paragraph, after the word “employees”;

(2) by adding the words “and by employees engaged directly by such establishments to temporarily replace the permanent employees” at the end of subparagraph 8 of the first paragraph;

(3) by adding, after subparagraph 8 of the first paragraph, the following subparagraph:

“(9) work carried out for a natural person, for his own account and for personal and strictly non-profit-making purposes, and consisting in

i. maintenance, repair, renovation and alteration work in respect of a dwelling in which he lives;

ii. the construction of a garage or a storage shed adjoining a dwelling in which he lives, whether contiguous thereto or not.”;

(4) by replacing the second and third paragraphs by the following paragraphs:

Prohibition

“In no case may a natural person, other than an independent contractor, doing business for his own account carry out construction work for others and without the assistance of employees.

Independent contractor In this Act and the regulations, an independent contractor is deemed to be an employer.

Hiring of independent contractors No professional employer may hire, directly or through an intermediary, the services of an independent contractor other than an independent contractor belonging to the "Heavy equipment contractor" or "Excavation and earthwork contractor" subcategory for the purpose of carrying out construction work.

Hiring of independent contractors No person other than a professional employer may hire the services of an independent contractor who does not belong to the "Heavy equipment contractor" or "Excavation and earthwork contractor" subcategory, except for the purpose of carrying out maintenance, repair and minor renovation work.

Number of independent contractors No person other than a professional employer may cause maintenance, repair and minor renovation work to be carried out simultaneously on the same job-site by more than one independent contractor belonging to any subcategory whatever, except the "Heavy equipment contractor" or "Excavation and earthwork contractor" subcategory.

Minimum remuneration An independent contractor shall require a remuneration at least equal, on an hourly basis, to the remuneration in currency and to the compensation or benefits having pecuniary value determined by a collective agreement or a decree for an employee doing similar work, except benefits relating to a complementary social benefits plan."

c. R-20,
s. 81, am.

6. Section 81 of the said Act is amended

(1) by inserting, after subparagraph *c* of the first paragraph, the following subparagraph:

"(c.1) recover, both from the employee contemplated in paragraph *c* who performs construction work without being the holder of the competency certificate required for that work and from his employer, an additional amount equal to 20% of the difference between the obligatory amount and that actually paid;"

(2) by replacing subparagraph *f* of the first paragraph by the following subparagraph:

"(f) at any reasonable time and even at the place of work, require from any employer or employee any information considered necessary or require from any such person that he furnish the information in writing

to the Commission within a period of ten clear days following the delivery of a written request to that effect or following the day such a request is made to him by any appropriate means;”;

(3) by adding, after the second paragraph, the following paragraph:

Recourse

“The Commission may exercise any recourse provided for in subparagraphs *a* and *b* of the first paragraph against any person who is bound to pay to an employee the wage owed to him.”

c. R-20,
s. 81.0.1,
added

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

Necessary
information

“**81.0.1** Notwithstanding any other provision of this Act, the Commission may, by means of a written request to that effect, require any person contemplated in section 7.2 and any association to furnish to it, in writing or by any other means determined by the Commission, within a period of ten clear days of the sending of the request, any information and a true copy of any document deemed necessary for the carrying out of the duties of the Commission.”

c. R-20,
s. 81.1, am.

8. Section 81.1 of the said Act is amended by striking out the words “contemplated in paragraph *e* of section 81” in the first line.

c. R-20,
s. 81.2,
added

9. The said Act is amended by inserting, after section 81.1, the following section:

Deposit of
recovered
sums

“**81.2** The Commission shall deposit in any fund established by it pursuant to paragraph 8 of section 4 that it determines any amount it recovers pursuant to subparagraph *c.1* of section 81.”

c. R-20,
s. 82, am.

10. Section 82 of the said Act is amended

(1) by adding the words “and, in particular, the number of hours done by the independent contractor” at the end of subparagraph *b* of the first paragraph;

(2) by striking out subparagraph *b.1* of the first paragraph;

(3) by striking out the words “or, as the case may be, upon the skilled tradesman who works otherwise than for the private purposes, other than the commercial or industrial purposes, of a natural person” in the second, third, fourth and fifth lines of subparagraph *c* of the first paragraph;

(4) by replacing the words “skilled tradesman, 1% of his remuneration” at the end of paragraph 2 of subparagraph *c* of the first paragraph by the words “independent contractor, 1% of his remuneration in that capacity”.

c. R-20,
s. 83,
replaced
Offence and
penalty

11. Section 83 of the said Act is replaced by the following sections:

“**83.** The following persons are guilty of an offence and liable, in addition to costs, to the fines provided for in section 120:

(1) every employer or employee who refuses or neglects to furnish the Commission or any person authorized by it with the information provided for in subparagraph *a* of section 82;

(2) every employer who does not grant, on request, or delays to grant the Commission, or any person authorized by it, access to the register, the registration system or the pay-list provided for in subparagraph *a* of section 82;

(3) every person who does not grant, or delays to grant, the Commission, or any person authorized by it, access to the place where construction work is being done or to an establishment of an employer.

Offence and
penalty

“**83.1** Every employee or employer who fails to comply with a request made by the Commission pursuant to subparagraph *f* of the first paragraph of section 81 is guilty of an offence and liable, for each day during which the offence continues, in addition to costs, to a fine of \$125 in the case of an individual and \$575 in the case of any other person.

Offence and
penalty

“**83.2** Every person or association who or which fails to comply with a request made by the Commission pursuant to section 81.0.1 is guilty of an offence and liable, for each day during which the offence continues, in addition to costs, to a fine of \$125 in the case of an individual and \$575 in the case of any other person or an association.”

c. R-20,
s. 84, am.

12. Section 84 of the said Act is amended by replacing the figure “350” in the fourth line by the figure “575”.

c. R-20,
s. 92, am.

13. Section 92 of the said Act is amended

(1) by inserting, after subsection 3, the following subsection:

Agreement
to transfer
sums

“(3.1) The Commission may, according to law, make an agreement with any person or association to allow the reciprocal transfer of all or part of the sums accumulated to the credit of a beneficiary under

a complementary social benefits plan which he or it administers. The Commission may establish by by-law the terms and conditions necessary for the implementation of such an agreement.”;

(2) by striking out subsection 4.

c. R-20,
s. 114,
repealed

14. Section 114 of the said Act is repealed.

c. R-20,
s. 119.1,
am.

15. Section 119.1 of the said Act is amended by striking out paragraphs 5 and 6.

c. R-20,
s. 120, am.

16. Section 120 of the said Act is amended

(1) by inserting the words “, of a decree” after the word “act” in the first line of the first paragraph;

(2) by replacing the words “of a corporation” in paragraph *b* by the words “of any other person”.

c. R-20,
s. 122, am.

17. Section 122 of the said Act is amended

(1) by replacing the fifth, sixth, seventh, eighth and ninth lines of the first paragraph of subsection 4 by the following: “an employee so as to pay a lower wage, is guilty of an offence and liable, in addition to costs,

(a) to a fine of \$1 000 in the case of an individual;

(b) to a fine of \$2 000 in the case of any other person or an association;

(c) to a fine equal to twice the amount of the fine prescribed in paragraph *a* or *b*, as the case may be, for any first subsequent offence within two years;

(d) to a fine equal to three times the amount of the fine prescribed in paragraph *a* or *b*, as the case may be, for any other subsequent offence within two years.”;

(2) by striking out the second paragraph of subsection 4;

(3) by replacing the fourth, fifth and sixth lines of subsection 5 by the following: “summary proceedings, in addition to costs, to the fines prescribed in section 120.”

c. R-20,
words,
replaced

18. The said Act is amended by striking out the words “, the skilled tradesmen” in paragraph 5 of section 4, the words “and skilled tradesmen” in sections 18.2 and 85.1, the words “or skilled tradesman” in subparagraph 4 of the first paragraph of section 80.1, in sections 85.5 and 85.6 and the words “, skilled tradesman” in paragraphs 1, 2 and 7 of section 119.1, with the necessary changes.

c. F-5, s. 1,
am.

19. Section 1 of the Act respecting manpower vocational training and qualification (R.S.Q., chapter F-5) is amended

(1) by inserting the words “or enrolled in accordance with a program established pursuant to Chapter II.1” after the words “under this Act” in the third line of paragraph *b*;

(2) by adding the words “or a certificate issued under a program established pursuant to Chapter II.1” at the end of paragraph *f*.

c. F-5,
Chap. II.1,
s. 29.1,
added

20. The said Act is amended by inserting, after section 29, the following chapter:

“CHAPTER II.1

“OPTIONAL TRAINING AND QUALIFICATION PROGRAMS

Vocational
training and
qualification
programs

“29.1 The Minister may establish vocational training and qualification programs in respect of trades or vocations the carrying on of which is not regulated under this Act. These programs may in particular determine

(1) the activities that are part of a trade or vocation;

(2) the conditions for admission to apprenticeship and examinations and for obtaining a certificate of qualification;

(3) the subjects of the examinations and the certificates of qualification awarded upon completion of the programs;

(4) the duties exigible for the taking of examinations and for the issue and renewal of a certificate of qualification and apprentice booklet;

(5) any other related or supplementary provision deemed necessary for the efficient implementation of these programs.”

Complement-
ary social
benefits
plans

21. The Commission de la construction du Québec may establish by by-law the terms and conditions necessary for maintaining, for such period of time as it may determine, complementary social benefits plans

for the benefit of the employees and skilled tradesmen participating in these plans on 31 December 1988 and carrying on work that is no longer subject to the Act respecting labour relations, vocational training and manpower management in the construction industry. The by-law shall determine the amounts of their assessment and of their contributions to the plans.

Provisions
applicable

Section 15 and the first and third paragraphs of section 123.3 of the said Act apply to the by-law.

Trade of
carpenter-
joiner

22. The following activities are deemed to belong to the trade of carpenter-joiner by virtue of the Act respecting manpower vocational training and qualification (R.S.Q., chapter F-5) and the Regulation respecting the vocational training and qualification of manpower, covering electricians, pipe fitters, elevator mechanics and electrical machinery operators in sectors other than the construction industry (R.R.Q., c. F-5, r.4), that is, structural assembly work, namely,

(1) the construction and installation of building forms for footings, piers, walls, columns, slabs and stairs;

(2) the erection of retaining walls, beams, joists, supporting partitions, overhanging frameworks, stairs and roofs.

Certificate
of qualifica-
tion, appren-
ticeship card,
attestation
of expe-
rience

Valid journeyman competency certificates and apprentice competency certificates issued under the Regulation respecting the issuance of competency certificates (O.C. 673-87, 29 April 1987) and valid certificates of qualification, apprenticeship cards and attestations of experience, issued under the Regulation respecting the vocational training and qualification of manpower in the construction industry (R.R.Q., c. F-5, r.3), covering the trade of electrician, pipe fitter, elevator mechanic or carpenter-joiner or any specialty or skill belonging to such trades, are deemed to be, as the case may be, valid certificates of qualification, apprenticeship cards or attestations of experience issued under the Regulation respecting the vocational training and qualification of manpower, covering electricians, pipe fitters, elevator mechanics and electrical machinery operators in sectors other than the construction industry, and corresponding to such trades or to a specialty or skill belonging to such trades.

Provision
applicable

This section applies only to work defined in subparagraph 9 of the first paragraph of section 19 of the Act respecting labour relations, vocational training and manpower management in the construction industry. It ceases to have effect on the date fixed in a regulation under section 30 of the Act respecting manpower vocational training and qualification.

Coming into
force

23. This Act comes into force on 17 June 1988, except section 1, paragraph 4 of section 5, section 10, paragraph 2 of section 13, section 15, section 18 and section 21, which come into force on 1 January 1989.