Global Employer Handbook Chapter
Quebec

Introduction:

Quebec is part of the Canadian federal state, whose parliamentary system is modeled on the British system. The British North America Act, 1867, which established Canada, created two levels of government - a central or federal government and the provincial governments.

The federal Parliament has jurisdiction over industries and fields such as external affairs, national defense, currency, international and inter-provincial transportation, navigation, postal service, banking, as well as other employers whose core activities are cross-provincial. Airlines, railways, and telecommunication companies generally fall within the federal sphere. Federally regulated companies must abide by the common law and federal statutes.

Provinces have jurisdiction over education, municipal institutions, local works, etc., as well as "generally all matters of a merely local or private nature in the province." The majority of companies in Canada are provincially regulated. Each province has its own legislature and adopts legislation in those fields that fall under its jurisdiction. Provincially regulated businesses are subject to provincial statutes. This chapter addresses employment and labour laws relevant to employers governed by Quebec provincial law.

In Quebec, it is a civil law system which applies to private matters such as an employment relationship, thus the system is based on codes and explicit legislation although the interpretation of such legislation will be influenced by case law.

In Quebec, the bases of individual employment contracts are to be found in the *Civil Code of Quebec*, S.Q., 1991 c. 64 (the “Civil Code”), which sets out several rights and obligations applicable to employers and employees in the course of an employment contract and in *An Act respecting Labour Standards* CQLR c N-1.1. (The “LSA”), which sets out the specific minimum labour standards which must be respected.

On the other hand, collective labour relations are also set out in specific legislation, the *Labour Code*, CQLR c C-27 (the "Labour Code").

Other legislation such as an *Act respecting occupational health and safety*, CQLR c S-2.1 (the “HSA”), an *Act respecting industrial accidents and occupational diseases*, CQLR c A-3.001 (the “WCA”), the *Charter of Human Rights and Freedoms*, CQLR c C-12 (the “Charter”) and the *Charter of the French Language*, CQLR c C-11 (the “French Language Charter), are also important to keep in mind when discussing employment matters.

Indeed, we note here that the French Language Charter mentions that every employer must draw up his written communications to his staff in French.

I. Hiring

A. Basics of Entering an Employment Relationship

- At Will Vs. Just Cause (US & other appropriate **jurisdictions)**

The concept of employment "at-will" which states that either party may end the relation without liability does not exist in Quebec. Instead, the employment relationship is contractual in nature. It is governed by the general rules of contract, as well as by the specific provisions concerning contracts of employment, which are found in the Civil Code and in the LSA. In addition, quite a few other statutes affect the employment relationship. Like most contracts under civil law, the employment contract need not be in writing.

A contract of employment can be for a fixed or an indefinite term as per section 2086 of the Civil Code. If the contract is for a fixed term, unless there is a specific clause pertaining to termination with or without notice, an employer is likely be held liable for all outstanding wages and benefits until the date on which the contract was originally intended to expire.

If the employment contract is for an indefinite term, which is most often the case, either party can terminate it by giving "reasonable notice" or an indemnity in lieu thereof. It has been held that all contracts of employment contain an implied provision that they may be terminated upon "reasonable notice." According to the case law, this notice period varies from one individual to another depending on several factors, the most important ones being age, level of responsibility, and/or position in the corporate hierarchy. Salary, years of service, marketability and relocation opportunities, and the circumstances surrounding the hiring of the individual also are important factors. This list is by no means exhaustive, and other more subjective factors may be considered in particular situations. Likewise, not all of these factors are assigned equal value.

Notwithstanding the general provisions of the Civil Law mentioned above, we must point out that the LSA provides a particular complaint mechanism for employees who have two or more years of continuous service with their employer. These employees can file a complaint with the Commision des normes, de l'équité, de la santé et de la sécurité du travail (the "CNESST") pursuant to the termination of their employment and the onus rests with the employer to establish that there existed just and sufficient cause for termination. Should the employer fail in establishing just and sufficient cause for termination, the usual remedy will be the reinstatement of the employee in his/her position with full back pay. This recourse in open to qualifying employees irrespective of how much notice or indemnity in lieu thereof has been offered.

The termination of employees is also governed and protected by certain statutes, which are discussed more fully below.

- **Common Law Claims**

Not applicable in Québec

- **Statutory Claims**

Under the LSA

Employees in Quebec are protected and granted various remedies under the LSA. These remedial sections read as follows:

Section 122 provides a recourse against prohibited practice for employees. This section provides that "*No employer or his agent may dismiss, suspend or transfer an employee, practise discrimination or take reprisals against him, or impose any other sanction upon him"* on the grounds mentioned at that section, such as the exercise of a right pursuant to the LSA, that she is pregnant, that an inquiry is being conducted by the Commission in an establishment of the employer, etc. An employee who believes he has been the victim of a practice prohibited by section 122 and who wishes to assert his rights must do so before the CNESST within 45 days of the occurrence of the practice complained of.

Section 122.1 provides protection to employees against dismissals, suspensions or forcing the retirement of an employee, discrimination or reprisals against him on the ground that he has reached or passed the age or the number of years of service at which he should retire pursuant to a general law or special Act applicable to him, pursuant to the retirement plan to which he contributes, pursuant to the collective agreement, the arbitration award in lieu thereof or the decree governing him, or pursuant to the common practice of his employer. The time limit to file such a complaint is 90 days.

As previously alluded to, Section 124 provides protection for employees against dismissals made without good and sufficient cause. This is discussed more in detail in section V paragraph B. This latter section does not apply to unionized employees who can file a grievance, as this is considered a "remedial procedure" within the meaning of Section 124 of the LSA.

Note that a non-unionized employee, to whom the LSA does apply, will be represented free-of-charge by the lawyers of the CNESST in any proceeding relating to Division II (sections 122 to 123.5 of the LSA) and Division III (sections 124 to 128 of the LSA) of Chapter V, LSA (Recourses) (sections 123.5 and 126.1 of the LSA).

Under the Charter

The Charter is a Quebec legislation with a quasi-constitutional status.

The Charter provides for various recourses, and the courts have developed the concept of the "duty to accommodate" an employee who has been the victim of discrimination on a ground prohibited by the Charter. This has been applied in several cases involving work schedules that came into conflict with religious beliefs or normal requirements of a position in conflict with a handicap, as well as to other miscellaneous situations.

It also should be noted that the Charter and the LSA specifically prohibit an employer from compelling an employee to retire automatically at a certain age. An employee is entitled to work until he or she chooses to retire, provided that he or she meets the normal requirements of his or her position.
An individual who has reason to believe that he/she has been discriminated against can pursue the matter by filing a complaint with the Quebec Human Rights Commission (the "Commission") setting out the particulars of the allegation.

The Commission does not have exclusive jurisdiction over allegations of discrimination: an individual can also file recourses before civil courts or, if he/she is unionized, file a grievance alleging having been a victim of discrimination.

Once a complaint is received, the Commission will determine whether the complaint is warranted or is frivolous or vexatious. The Commission does not adjudicate complaints – it only serves to screen complaints. Moreover, the Commission has the authority to refuse to entertain a complaint on various grounds. The Commission may refuse or cease to act in favour of the victim where the complaint is based on acts or omissions the last of which occurred more than two years before the filing of the complaint.

If the Commission does not reject or otherwise refuse to deal with a complaint, it starts an inquiry. The subject of the complaint will be served with a copy of the allegations and then, the Commission will request that a reply be provided within a set time line.

After receiving a reply, the Commission may attempt to mediate the issues between the parties.

If mediation proves unsuccessful, the Commission may then proceed to formally investigate the complaint. Investigators nominated under the Charter have broad powers to enter premises, interview individuals and review documents.

If, after an investigation, the Commission is satisfied that there are valid grounds to pursue the matter further, the complaint will then be referred to the Human Rights Tribunal, which is the responsible for adjudicating human rights complaints under the Charter. At this stage, the plaintiff is represented before the Tribunal by the Commission, and does not have to disburse any amount for his legal representation (the Commission provides him with a lawyer, free of charge).

Under the Civil Code

Employees may bring a claim pursuant to the Civil Code in cases where they believe they were not given sufficient notice of termination (or an indemnity in lieu thereof). This is discussed below.

B. Discrimination (in the Hiring Process)

The Charter prohibits discrimination in respect of the hiring, apprenticeship, duration of the probationary period, vocational training, promotion, transfer, displacement, laying-off, suspension, dismissal or conditions of employment of a person or in the establishment of categories or classes of employment.

Additionally, the Charter specifically prohibits employers from requiring a person to give information regarding any of the following grounds in an employment application form or employment interview: race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap (the “Prohibited Grounds”), unless the information is useful for the implementation of an affirmative action program in existence at the time of the application.

An employer may also ask about the above-mentioned grounds if he is required to obtain information because a distinction, exclusion or preference based on the aptitudes or qualifications required for an employment is necessary. In which case, such a distinction, exclusion or preference is deemed non-discriminatory. This exception is called the “bona fide occupational requirement”. To meet these criteria, the qualification must be: imposed honestly and with the good faith belief that it is necessary

to adequately perform the work; adopted for a purpose that is rationally connected to the performance of the job; and reasonably necessary to accomplish the legitimate work-related purpose. To prove that the qualification is reasonably necessary, the employer must demonstrate that it is impossible to accommodate an individual employee who lacks that qualification without the employer experiencing undue hardship.

Lastly, the Charter also explicitly prohibits employers from dismissing, refusing to hire or otherwise penalizing a person in his employment owing to the mere fact that he was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence. The onus is on the employer to demonstrate that there is in fact a clear nexus between the penal or criminal offence and the employment and this burden is difficult to meet.

C. Employment Applications

- **Permissible Inquiries**

An employer may ask a candidate information regarding his or her skills and abilities related to the position he or she is applying for.

As mentioned above, it is not encouraged to ask an employee questions about any of the Prohibited Grounds because doing so could lead to discrimination claims, unless you fit in one of the exceptions mentioned above.

D. Use of Employment Contracts

Employment contracts are strongly recommended in order to define and regulate employment relationships. That being said, they need to comply with the different applicable legislation or else, they will be unenforceable. For example, clauses that provide less than the minimum standards described in the LSA would be considered illegal and therefore, unenforceable, as well as any that contravene what is provided for in the Civil Code (the provisions of the Civil Code being of public order).

Because the employer typically has most or all of the bargaining power compared to the employees, an employment contract is considered to be a contract of adhesion, which is a contract in which the essential stipulations were imposed or drawn up by one of the parties, on his behalf or upon his instructions, and were not negotiable. The Civil Code provides special protection against abusive clauses (defined as a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore contrary to the requirements of good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract) that are found in adhesion contracts. Indeed, pursuant to section 1437 of the Civil Code, an abusive clause in a contract of adhesion is null, or the obligation arising from it may be reduced.

Therefore, if a court finds that a clause in the employment contract is unreasonable, it will refuse to enforce it, regardless of whether or not there is a clause in which the employee “recognizes” the reasonableness of the provision.

- **Mandatory arbitration clauses**

Other than in unionized workplaces where any disagreement pursuant to the applicable collective agreement must be brought before an arbitrator pursuant to the Labour Code, a mandatory arbitration clause in an employment agreement will not be enforceable. Indeed, such a clause would be deemed abusive on the adhering party. Furthermore, many issues that come up regarding employment questions are to be decided and instigation exclusively before the Administrative Labour Tribunal (the "TAT").

- **Non-Disclosure Agreements/Non-Competes**

The Civil Code explicitly sets out certain obligations pertaining to an employee's duty of loyalty at section 2088:

> *"**2088.** The employee is bound not only to carry on his work with prudence and diligence, but also to act faithfully and honestly and not to use any confidential information he may obtain in carrying on or in the course of his work.*
>
> *These obligations continue for a reasonable time after cessation of the contract, and permanently where the information concerns the reputation and private life of another person."*

Therefore, pursuant to Section 2088 of the Civil Code, not only does an employee have the obligation, during the course of his employment, to act with loyalty towards his employer but also, even without a non-compete covenant or any covenant in his contract of employment providing a duty of confidentiality, the employee must act diligently and with loyalty towards his ex-employer and protect confidential information for a reasonable period of time following the termination of his employment.

Here are some principles developed by Quebec Tribunals under Section 2088 of the Civil Code:

- An employee who leaves his job can continue to exercise his profession freely and can also compete with his former employer;
- The duty of loyalty of an employee shall be interpreted restrictively, competition being the rule;
- The duty of loyalty under this provision should not be interpreted as the equivalent of a non-competition clause.
- The jurisprudence wants to proscribe the following behaviours:
  - The use of confidential documents or information belonging to a former employer in order to solicit its clients;
  - The use of false representations in order to solicit the clients of the former employer;
  - The insistent solicitation of ex-colleagues, still working for the former employer;
  - The appropriation of goods/properties belonging to the former employer.
- When Tribunals are of the opinion that Section 2088 of the Civil Code has been violated by an ex-employee, usually facts reveal bad faith or reprehensible conduct on the part of this employee.

If an employer believes that a former employee contravenes to his duty of loyalty, he usually asks the Superior Court of Quebec to deliver an injunction prohibiting the continuation of such violation.

In the same procedure, an employer can also request the payment of damages, if any (i.e. loss of clients, contracts, appropriation of commercial secrets, etc.).

In order to ensure even more protection for the employer, many include explicit non-disclosure, non-solicit and non-compete covenants.

The validity of non-compete covenants is governed by Section 2089 of the Civil Code. This section reads as follows:

> "***2089.*** *The parties may stipulate in writing and in express terms that, even after the termination of the contract, the employee may neither compete with his employer nor participate in any capacity whatsoever in an enterprise which would then compete with him.*
>
> *Such a stipulation shall be limited, however, as to time, place and type of employment, to whatever is necessary for the protection of the legitimate interests of the employer.*
>
> *The burden of proof that the stipulation is valid is on the employer."*

The most important rule with regards to such a covenant is that **it has to be drafted in clear and precise terms;** the employee must know exactly the scope of the non-competition clause. In fact, where a Tribunal observes an ambiguity in the non-competition clause, it will generally invalidate it and declare it as not enforceable.

- **Three (3) criteria to be considered in determining the validity of a non-competition covenant**

Quebec Tribunals analyze the validity of such covenants with regards to the reasonability of the three following criteria:

(1) The duration of the restriction;

(2) The territorial scope of the restriction; and

(3) The nature of the activities that are the subject to the restriction.

It is also important to be aware that some judges appreciate the reasonableness of a non-competition clause at the moment of its signature by the employee.

- **The duration of the restriction**

Regarding the **first criterion**, Quebec Tribunals usually recognize as valid a restriction of a duration that is reasonable in order to protect the employer's legitimate interests and Quebec Courts regularly mention that each case is a particular one that may be analyzed with regards of its own circumstances depending on the kind of business operated, the role of the employee within the enterprise of the employer and the difficulties to which the employer may be confronted to in trying to replace the employee.

- **The territorial scope of the restriction**

Regarding the **second criterion**, Quebec Courts have repeatedly refused to enforce non-compete covenants that do not precisely describe the scope of the territory on which an employee cannot compete his former employer.

Quebec Courts also consider that a restriction with regards to territory which is larger than the territory where the employee was performing his activities or larger than the territory where the employer was carrying on its business is not reasonable. The restriction must be limited to what is necessary to protect the employer's legitimate interests.

Finally, it is important to mention that Quebec Tribunals insist on the fact that the covenant restricting the territory be drafted clearly and precisely, because an ambiguity in the description of the territory could render this covenant unreasonable.

- **The nature of the restricted activities**

Regarding the **third criterion**, Quebec Tribunals require that the employer justifies interests which need to be protected by the restriction on activities and that without this restriction these interests may be threatened.

Tribunals give a lot of importance to the nature of the activities prohibited to an employee, within their determination of the reasonability of the covenant. The underlying premise of their analysis being that no non-competition clause and, as a general rule, no implied duty arising from an employment contract should prevent an individual from earning a living by using his competency and professional skills for a competitor, as these relate to his person and his patrimony.

Unless particular circumstances, prohibiting an employee from working for a client does not constitute a legitimate interest. Quebec Tribunals also consider that the prohibited activities have to correspond to the activities performed by the employee during the the course of his employment. Moreover, the restriction regarding the domain of activities cannot be larger than the domain in which the employer evolves.

Finally, and as for the other two (2) criteria, the prohibited activities have to be defined clearly and precisely; otherwise, a Tribunal could conclude to their unreasonableness.

The burden of proof is on the employer to demonstrate the validity of such a clause. If the employer is unable to do so, the Court cannot rewrite it or simply declare that only one part of the covenant is null; **the Court will completely void it** and the employee will not be subject to any restriction regarding this covenant.

- **Non-solicitation**

In the particular context of non-solicit covenants, the notion of solicitation must be understood as a communication personally addressed to the employer's actual clients, potential clients or even former clients; it results in a positive gesture emanating from the party who is alleged to have violated the clause.

Non-solicitation clauses are submitted to the similar legal standards as the non-compete clauses. Consequently, they have to be limited to whatever is necessary for the protection of the legitimate interest of the employer. There is certain controversy in case law regarding whether or not such a

clause needs to be limited to a certain territory and therefore, we usually recommend inserting one, if it is large, just to be safe.

- **Section 2095 of the Civil Code**

Section 2095 of the Civil Code provides that:

> *"**Art. 2095**. An employer may not avail himself of a stipulation of non-competition if he has resiliated the contract without a serious reason or if he has himself given the employee such a reason for resiliating the contract."*

This provision only applies to the non-competition provisions and not to the general duty of good faith and loyalty of the employee. The application of this provision also extends to non-solicitation and non-solicitation provisions. It is important to note that this provision is of public order and cannot be set aside by contracts.

Section 2095 will apply when:

- The employer made the decision to terminate the employment of an employee or if he has given the employee such a reason for resiliating the contract; and

- The employer did not have a serious reason to resiliate the contract of the employee.

In other words, non-competition and non-solicitation provisions in an employment agreement will be unenforceable **in all cases** where the employment is terminated by the employer without serious reason.

E. Advertising/Recruitment

As previously mentioned, in Quebec, the Charter specifically prohibits employers from requiring a person to give information regarding any of the Prohibited Grounds or about their criminal or penal record in an employment application form or employment interview, unless they are in one of the exceptions mentioned above (bona fide occupational requirement, etc.). The information requested must be required "*for a purpose rationally connected with the performance of the work involved and be reasonably necessary to achieve that legitimate work-related purpose*".

Additionally, pursuant to the French Language Charter, all offers of employment and advertising must be drafted in French.

F. Background Checks/ Employment References

As previously mentioned under subsection B. Discrimination (in the Hiring Process), the use of background checks in Quebec should be extremely limited and only be done in cases were there is a clear nexus between certain infractions and the position in question. Indeed, and as previously discussed, what the employer can do with the information a background check reveals is limited.

Employers may ask for employment references but just like any other information that is asked during the hiring process, there must be a link between the information asked and the abilities to do the job.

Employers may verify employer references to verify the accuracy of the information a candidate provided, for example skills and duration of employment, but an employer may not use references to obtain information to which he would not be entitled to or to go on a “fishing expedition” (for example, calling a previous employer to obtain information about the candidate’s history of being absent due to sickness, etc.).

II. Compensation

The LSA provides the minimum employment standards. These are of public order and therefore cannot be waived, unless done so in a collective bargaining agreement, as permitted by the LSA. Any condition of employment under a contract or a collective bargaining agreement that provides a greater benefit than the LSA will prevail.

A. Minimum Wage

Currently, the minimum wage in Quebec is set to 15,25$ per hour. However, employees who receive tips must be paid a minimum hourly rate of 12,20$ per hour.

The minimum wage rates are subject to change annually.

If an employee receives benefits having a pecuniary value from his employer, such as the use of an automobile or accommodations, this must not reduce his wage below the minimum wage rate.

To keep track of the current minimum wage applicable to different industries, please refer to: https://www.cnesst.gouv.qc.ca/en/working-conditions/wage-and-pay/wages/minimum-wage, published by the CNESST.

B. Wage Payments & Deductions

An employer has one month to give an employee their first pay. Thereafter, the pay must be issued at regular intervals that may not exceed 16 days, or one month in the case of senior managerial personnel or contract employees. If pay day falls on a statutory holiday, the employee must be paid on the working day preceding this holiday.

The wages may be paid:

- by cheque cashable within 2 working days
- in cash in a sealed envelope addressed to the employee
- by bank transfer

Sums in excess of the usual wages, such as premiums/bonuses and the overtime earned during the week preceding the payment of the wages, may be paid at the time of the following pay.

With each pay, the employer must remit to the employee a pay sheet allowing him to calculate his wages and deductions. This pay sheet must contain all the relevant particulars, such as:

- the employer’s name
- the employee’s name
- the job title

- the period of work corresponding to the payment
- the date of the payment
- the number of hours paid at the regular rate
- the number of overtime hours paid or replaced with a leave, with the applicable rate
- the nature and the amount of the premiums, bonuses, indemnities, allowances or commissions paid
- the wage rate
- the amount of the gross wages
- the nature and the amount of the deductions made
- the amount of the net wages that the employee receives
- the amount of the tips that the employee reported or that the employer attributed to him.

The employer has the right to make deductions from wages only if they are required to do so by a law, a regulation, a court order, a collective agreement, a decree or a mandatory supplemental pension plan. Any other deduction from wages may only be made with the employee's written authorization. The specific purpose of this deduction must be mentioned in the authorization document. The employee may cancel the authorization at any time, except for mandatory supplemental pension plans or group insurance plans.

C. Minimum Age/Child Labor

Since the adoption on June 1st, 2023 of Bill 19, *An Act respecting the regulation of child labour,* no employer may have work performed by a child under the age of 14 years, except in the cases and on the conditions determined by Government regulation.

The exceptions determined by regulation are currently as follows:

-a child who works as a creator or a performer in a field of artistic endeavour;
-a deliverer of newspapers;
-a babysitter;
-a child who provides homework assistance or tutoring;
-a child working in a family enterprise with fewer than ten employees if the worker is the child of the employer;
-a child working in a non-profit organization having social or community purposes or in a non-profit sports organization to assist another person or provide support;
-a child of 12 year of age or over, working in an agricultural enterprise with fewer than 10 employees, where the child performs light manual labour to harvest fruits or vegetables, take care of animals or prepare or maintain soil.

The LSA also state that where work for children under 14 is permitted by regulation, the employer must obtain the written consent of the holder of parental authority on a form established by the CNESST and indicate the main tasks, the maximum number of working hours per week and periods of availability.

Additionally, a child subject to compulsory school attendance may not work :

- during school hours;
- more than 17 hours per week or more than ten hours from Monday to Friday;
- at night, namely between 11 p.m. of a given day and 6 a.m. on the following day.

These prohibitions do not apply to any period of more than seven consecutive days during which no educational service is offered to the child.

The employer must also ensure that the child's work is scheduled so that the child is able to attend school during school hours.

Finally, an employer cannot have a child do work that exceeds his capacity or that risks:

- compromising his education
- adversely affecting his health or physical or moral development.

D. Overtime Requirements

The normal workweek usually lasts 40 hours. Its length serves to determine the point in time from which an employee begins to work overtime.

The hours worked in addition to the hours of the normal workweek must be paid with a 50% premium in addition to the regular hourly rate (time and a half), without counting the premiums available on an hourly basis such as night shift premiums.

At the employee's request, the employer may replace the payment of overtime with a leave of an equivalent duration of the overtime hours worked, increased by 50%.

The annual vacation and statutory holidays are considered days worked for the purposes of calculating overtime.

The 40 hours of the regular workweek does not apply, as regards the computing of overtime hours for the purpose of the increase in the usual hourly wage, to certain employees: such as managerial personnel and other explicitly mentioned categories of employees.

E. Workday/Workweek/Work hours

In Quebec, the regular workweek is 40 hours except in the cases where it is fixed by regulation of the Government.

An employee is deemed to be at work and must be paid:

- when he is at his employer's disposal on the worksite and he is required to wait for work to be assigned;
- during breaks granted by the employer;
- during the time of any travel required by the employer;
- during any trial period or training required by the employer.

The employer must reimburse the employee for the reasonable expenses that the employee must pay when, at the employer's request, he must travel or take training.

An employer is under no obligation to offer coffee breaks, but when a coffee break is granted, it must be paid and included in the calculation of the hours worked.

After a period of work of 5 consecutive hours, the employee is entitled to a 30-minute period, without pay, for his meal. He must be paid for this period if he is unable to leave his work station.

Indemnity for reporting to work

An employee who reports to work at the express request of his employer or in the normal course of his employment and who does not work or works fewer than 3 consecutive hours is entitled to an indemnity equal to 3 hours of pay at his regular wage.

The employee is entitled to the tips received during this period. If the provisions concerning overtime assure him a greater amount, the employee will not benefit from the 3-hour indemnity for reporting to work, but rather the number of overtime hours increased by 50%.

This provision does not apply in the case of superior force (example: fire) or when the employee is hired for periods of less than 3 hours (example: certain ushers, school bus drivers, school crossing guards, etc.).

Rest period

Each week, an employee is entitled to a rest period of at least 32 consecutive hours. In the case of a farm worker, his day of rest may be postponed to the following week if he is in agreement.

Refusal to work

An employee may refuse to work if, on a given day:

- he is asked to work more than 2 hours beyond his regular hours or more than 14 hours per 24-hour period, whichever period is shorter
- he is asked to work more than 12 hours per 24-hour period. This provision only applies to employees whose daily working hours are variable or non- continuous.

An employee may also refuse to work if, in a given week:

- he was not informed at least five days in advance that he would be required to work, unless the nature of his duties requires to remain available, he is a farm worker, or his services are required within the limits set out in the preceding paragraph (request to extend his regular working day);
- he is asked to work more than 50 hours, except if his working hours are staggered
- he is asked to work more than 60 hours. This provision only applies to employees who work in a remote area or, more specifically, on the James Bay territory.

An employee cannot refuse to work:

- if the exercise of this right jeopardizes the life, health or safety of workers or the population
- in the case of a risk of destruction of or serious damage to property and buildings, or in another case of superior force
- if this refusal violates his professional code of ethics.

F. Benefits/Health Insurance

Canada has a state-run, universal health care system therefore, if you are a Canadian citizen or permanent resident, you may apply for public health insurance. With it, you don’t have to pay for most health-care services. The universal health-care system is paid for through taxes. When you use public health-care services, you must show your health insurance card to the hospital or medical clinic.

Each province and territory has its own health insurance plan. In Quebec it is called the Régie de l'assurance maladie du Québec.

There is therefore no obligation for employers to provide health insurance and/or benefits to employees in Quebec but employers may choose to offer supplemental health benefits as a fringe benefit. In unionized environments, plans often are integrated into the collective agreement and therefore are not optional.

However, Employers are required to participate in the Workers' Compensation insurance scheme, as set out in the *Act respecting industrial accidents and occupational diseases*, and described more fully in Sections X.

III. Time Off/Leaves of Absence

A. Paid Time Off

- **Vacation Pay**

Entitlement to vacation is acquired during a period of 12 consecutive months. Known as the "reference year", this period extends from May 1st of the preceding year to April 30th, of the current year, unless an agreement or decree fixes a different starting date for that period.

The length of the vacation is established based on the employee's period of uninterrupted service. As for the amount of the indemnity, it varies according to the gross wages earned during the reference year.

The following chart shows the minimum amount of vacation time and indemnity provided in the LSA:

Uninterrupted service at the end of the reference year_Length of vacation	Indemnity	
Less than one year	1 day per full month of uninterrupted service without exceeding 2 weeks	4 %
1 year to less than 3 years	2 uninterrupted weeks	4 %
3 years and over	3 uninterrupted weeks	6 %

The employer has the privilege of setting the date of vacations. However:

- He must inform the employee of the date of his vacation at least 4 weeks ahead of time;
- He cannot replace the vacation with a compensatory indemnity, except when a collective agreement or a decree provides for a specific provision to this effect.

An employer cannot reduce the length of a part-time employee's vacation or modify the method of calculation of his indemnity in relation to that of the other employees who perform the same work in the same establishment simply because he works fewer hours per week (except where an employee earns more than twice the minimum wage).

It also is possible for an employee who is entitled to two weeks of vacation to request an additional leave, but without pay, for the length of time necessary to bring his or her annual leave to three weeks.

- **Sick Leave Pay**

The LSA provides that the employee has the right to ten (10) days of leave without pay for family

reasons. Two (2) of these days of leave are paid by the employer if the employee has three (3) months or more of continuous service.

An employee who is absent owing to sickness is also remunerated for such absences up to a maximum of two (2) days, if the employee has three (3) months or more of continuous service.

However, these paid sick days cannot be combined with the two (2) days of paid leave already provided during absences for family reasons.

- **Holiday Pay**

The majority of Quebec employees are entitled to an indemnity or a compensatory leave (at the employer's choice) for each of the following statutory holidays:

- January 1st (New Year's Day)
- Good Friday or Easter Monday at the employer's choice
- The Monday preceding May 25th (National Patriots' Day)
- June 24th (National Holiday)
- July 1st. If this date falls on a Sunday: July 2nd
- The 1st Monday in September (Labour Day)
- The 2nd Monday in October (Thanksgiving)
- December 25th (Christmas Day).

Employees are also entitled to an indemnity or a compensatory leave if the holiday does not fall within their regular schedule, at the employer's choice.

This leave must be taken in the 3 weeks preceding or following the holiday, except in the case of the National Holiday which must be taken on the day it is observed.

- **Other**

B. Family and Other Medical Leaves

As previously mentioned, an employee has the right to ten (10) days of leave without pay for family reasons.

For the purpose of these unpaid leaves, in addition to the spouse of the employee, "parent" means the child, the father, the mother, the brother, the sister and the grandparents of the employee or his spouse, as well as the spouses of these people, their children and the spouses of their children.

Is also considered as the parent of an employee for the purposes of these leaves:

(1) a person who has acted or acts as a foster family for the employee or spouse;
(2) a child for whom the employee or his spouse acted or acts as host family;

(3) the guardian, the curator or the person under guardianship or curatorship of the employee or spouse;
(4) the incapable person who has designated the employee or his spouse as representative;
(5) any other person in respect of whom the employee is entitled to benefits under a law for the help and care he gives him because of his condition health. " (79.6.1 LSA)

An employee may be absent from work for a period of not more than 16 weeks over a 12-month period when his presence is required from a parent or a person for whom the employee acts as a caregiver, such as attested by a professional working in the health and social services sector, due to a serious illness or a serious accident. In the case where this parent or person is a minor child, this period of absence is not more than 36 weeks in a 12-month period. However, if a minor child of the employee has a serious and potentially mortal illness which is attested by a medical certificate, the employee is entitled to an extension of the absence, which shall end at the latest, 104 weeks after the beginning thereof. (79.8 LSA)

An employee may be absent from work for a period of not more than 27 weeks over a 12-month period when his presence is required from a parent, other than a minor child, or from a person for which the employee acts as a caregiver, as attested by a professional in the field of health and social services, in particular because of a serious life-threatening illness attested by a medical certificate. (79.8.1. LSA)

An employee may be absent from work for a period of not more than 104 weeks if the employee’s minor child has disappeared. If the child is found before the expiry of the period of absence, that period shall end on the eleventh day that follows the day on which the child is found. (79.10 LSA)

An employee may be absent from work for a period of not more than 104 weeks following the death of his minor child (79.10.1. LSA). An employee may also be absent from work for a period of not more than 104 weeks if the employee’s spouse or his father, his mother or his child of full age commits suicide. (79.11. LSA) or if the death of the employee’s spouse or child of full age occurs during or results directly from a criminal offence (79.12. LSA).

At the end of the leave, the employee is entitled to return to his or her former position with the same benefits and wages had he or she remained at work. If the position no longer exists, the employer must recognize all the rights and privileges to which the employee would have been entitled had he or she been at work when the position ceased to exist. In the event of dismissals or layoffs, the employee on leave retains the same rights as the employees who were dismissed or laid off. (79.4 LSA).

Bereavement leave provides a maximum of five (5) days and since January 1, 2019, two (2) of these days, are paid, on the occasion of the death or funeral of his spouse, child or child of his spouse, father, mother, brother or sister. In addition, an employee is entitled to one day off, without pay, following the death of other relatives as defined by section 80.1 of the LSA.

One day of leave with pay is granted on the employee's wedding or civil union day (section 81 of the LSA). The notion of "spouse" also includes same sex partners if they have been living together in a de facto union for one year or longer. In addition, an employee is entitled to one day off, without pay, for the marriage or civil union of other relatives as defined by section 81 LSA.

C. Disability Leave

An employee is entitled to leave without pay for up to 26 weeks over a 12-month period due to sickness, an organ or tissue donation for transplant or an accident However, the leave may be extended for up to 104 weeks if the employee suffers a serious injury during or resulting from a criminal offense (79.1 of the LSA).

Participation in the group insurance and pension plans recognized in the employee's place of employment is to be maintained, subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer. The other advantages available to an employee during such leave will be determined by regulation. (79.3 LSA)

At the end of the leave, the employee is entitled to return to his or her former position with the same benefits that he would have been entitled to had he remained at work. If the position no longer exists, the employer must recognize all the rights and privileges to which the employee would have been entitled had he or she been at work when the position ceased to exist. This does not prevent an employer from dismissing, suspending, or transferring an employee if the consequences of the sickness or accident, or the repetitive nature of the absences, constitute good and sufficient cause, and where the employer's actions are in compliance with human rights legislation. (79.4 LSA)

In the event of dismissals or layoffs, the employee on leave retains the same rights as the employees who were dismissed or laid off, including rights regarding a return to work.

If the employee continues to make contributions to the various group insurance and pension plans during his leave, the employer must do likewise. If the employer does not, he is liable to legal proceedings under section 122 of the LSA.

Please note that the employee cannot benefit from these leaves if his absence is recognized as an employment injury within the meaning of the WCA.

D. Pregnancy Leave/Parental Leave

Although pregnancy and parental leave is unpaid, employees may have access to benefits through the Québec Parental Insurance Plan (QPIP). Please visit the following website: https://www.rqap.gouv.qc.ca/en/what-is-the-quebec-parental-insurance-plan.

That being said, the LSA contains fairly elaborate provisions governing the rights and obligations of an employer during and after these periods of absence:

In Quebec, employees are entitled to as many days without pay as are necessary for examinations related to pregnancy (section 81.3 of the LSA). The employee must advise the employer as soon as possible of the time at which she will be absent.

Additionally, maternity leave (sections 81.4 and seq. of the LSA) is provided for a maximum of 18 consecutive weeks without pay. During this period, the employee is entitled to receive up to 18 weeks of parental insurance benefits. The employee must notify her employer in writing 3 weeks before the start of the leave and inform him of the date when she will return to work.

An employee who has availed herself of the maternity leave provisions must be reinstated in exactly the same position as she would have been if she not taken maternity leave. However, if her employment normally would have been terminated due to restructuring, the employer can terminate her contract of employment but must recognize all the rights and privileges to which the employee would have been entitled had he or she been at work when the position ceased to exist. However, the contract of employment cannot be terminated simply because the employer prefers the employee who replaced her during her maternity leave. (Section 81.15.1 of the LSA).

An employee is entitled to be absent from work for five days for the birth or adoption of his or her child, or where there is a termination of pregnancy in or after the 20th week of pregnancy (section 81.1 of the LSA). The first two days of this leave are with pay. The leave may be divided into individual days at the request of the employee and may not be taken more than 15 days after the child arrives at the residence of his mother or father or after the termination of the pregnancy. The employee must notify his employer as soon as possible.

On the birth of his child, an employee is entitled to a paternity leave of not more than five consecutive weeks, without pay (section 81.2 of the LSA). During this period, the employee may be entitled to Parental Insurance Benefits. The employee must notify his employer in writing 3 weeks before the start of the leave and inform him of the date when he will return at work.

Parental leave provides a maximum of 65 consecutive weeks without pay, to be taken, except in certain cases determined by Government regulation, within 85 weeks following birth or the date the child is entrusted to the employee, in the case of adoption (sections 81.10 et seq. of the LSA). The employee must notify his employer 3 weeks ahead of time and inform him of the date on which he will return to work.

Special parental insurance benefits also are available for up to 32 weeks.

Section 81.15 of the LSA provides for continued participation in the group insurance and pension plans recognized in the employee's place of employment, subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer.

IV. Discrimination & Harassment

A. Discrimination

See above

B. Harassment and Bullying

Harassment

The LSA contains provisions on psychological harassment at work that protect the majority of Quebec workers, whether they are full or part time, unionized or not.

Psychological harassment at work is defined as a vexatious behavior in the form of repeated conduct, verbal comments, actions or gestures:

- That are hostile or unwanted;
- That affect the employee’s dignity or psychological or physical integrity;

- That make the work environment harmful.

A single serious incidence of such behaviour may constitute psychological harassment if it has the same consequences and if it produces a lasting harmful effect on the employee.

Despite the fact that sexual harassment has long been interpreted by the courts as being part of the definition of psychological harassment, since January 1st, 2019, this behavior is explicitly defined and included in the definition of psychological harassment in the LSA.

Psychological harassment may occur at every level of the organizational hierarchy. It may manifest itself between colleagues, persons in a position of authority may harass subordinates and conversely, employees may harass their superiors. The parties involved may be individuals or a group of people. The presumed harasser may also come from outside the enterprise. In this case, the harasser may be a client, a user, a supplier or a visitor.

i. Employer's obligation

The employer is required to provide his employees with an environment free of psychological harassment. However, this is an obligation of means and not of results. In other words, the employer cannot guarantee that there will never be any psychological harassment in his enterprise, but he must:

- Prevent any psychological harassment situation through reasonable means;
- Act to put a stop to any psychological harassment as soon as he is informed of it, by applying the appropriate measures, including the necessary sanctions.

The employer must adopt management practices that make it possible to prevent psychological harassment situations. In addition, since January 1st, 2019, employers have the obligation to adopt a psychological harassment prevention and complaint processing policy that includes, in particular, a section on behaviour that manifests itself in the form of verbal comments, actions or gestures of a sexual nature. This policy must be accessible to all employees.

In these preventive management practices, the employer must also consider that the harasser may be someone outside his enterprise: customer, user, supplier, visitor.

ii. Employee's recourse

If an employee believes he has been the victim of psychological harassment, he may follow the process set out in the employer's psychological harassment policy or may directly file a complaint in writing with the CNESST within two (2) years of the last incidence of the offending behaviour.

Following the receipt of such complaint, the CNESST shall make an inquiry with due dispatch. At the end of the inquiry, if no settlement is reached between the parties and the CNESST agrees to pursue the complaint, it shall refer the complaint without delay to the TAT.

This Tribunal has broad powers and can issue any orders that it believes fair and reasonable.

V. Termination/Dismissal Issues

A. Overview

Termination issues are regulated by both the Civil Code and the LSA.

Both of these laws provide the notice or indemnity in lieu of notice that is to be given to employees upon termination.

Civil Code

2091. *Either party to a contract for an indeterminate term may terminate it by giving notice of termination to the other party.*

The notice of termination shall be given in reasonable time, taking into account, in particular, the nature of the employment, the specific circumstances in which it is carried on and the duration of the period of work.

2092. *The employee may not renounce his right to obtain an indemnity for any injury he suffers where insufficient notice of termination is given or where the manner of resiliation is abusive.*

(…)

2094. *One of the parties may, for a serious reason, unilaterally resiliate the contract of employment without prior notice.*

Reasonable notice (working notice or indemnity in lieu of notice) under the Civil Code is particularly important because it forces an employer, when he terminates an employee with an indefinite term contract, to give him a reasonable notice of termination (or an indemnity in lieu of notice). It does not however provide for a specific notice or a specific indemnity in lieu of notice, instead it mentions that what amounts to “reasonable notice” must be calculated by considering, in particular, the nature of his employment, the special circumstances in which it is carried on, his age, his length of service for the employer, etc.

There is no legal requirement in Quebec to provide a severance pay to terminated employees if a reasonable notice has been given to them by the employer. In fact, an employer complies with its legal requirements when it gives to its employees, before the termination of their employment, a reasonable working notice rather than a pay in lieu of notice.

Also, no notice or indemnity in lieu of notice is due pursuant to the Civil Code if termination occurs for a serious reason.

Moreover, it is important to mention that the Civil Code provides that an employee may not renounce in advance his right to obtain compensation for any prejudice he suffers when insufficient notice of termination is given or when the manner the termination of his employment occurs is abusive. This implies that there is no point in setting out what will constitute “reasonable notice” of termination in an employment contract because this will not be binding on an employee. Indeed, an employee

could always sue the employer claiming that the amount mentioned in the employment contract was not in fact reasonable.

Interestingly enough, terminated employees who are covered by a collective bargaining agreement are not entitled to the reasonable notice of termination under Section 2091 of the Civil Code. In fact, contrary to the LSA, the notice of termination required by the Civil Code is not implicitly incorporated into a collective agreement, as ruled by the Supreme Court of Canada.

Even if giving notice is considered to be the rule under the Civil Code, most terminations of employment occur without notice. Rather, employers generally prefer to give terminated employees indemnities *in lieu* of notice.

Interestingly enough, when employers and employees do not come to an agreement at the end of the employment relationship, employers tend to provide them only with the minimum standards provided by the LSA, and wait for their claims. In fact, recourses instituted by employees to obtain indemnities under the Civil Code are usually costly, because these recourses must be filed to civil courts (the Quebec Court or the Superior Court of Quebec, depending on the amount) and because employees must retain the services of an attorney.

Meanwhile, it should be noted that the LSA establishes a minimum amount of notice of termination depending on the number of years of uninterrupted service of an employee. Despite the minimum notice of termination stated in the LSA, an employee may be entitled to a more generous notice pursuant to the Civil Code, depending on the specific circumstances of his case and in light of the jurisprudence.

LSA

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

The 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 absolutely null, except in the case of employment that usually lasts for not more than six months each year due to the influence of the seasons.

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

82.1. *Section 82 does not apply to an employee*

(1) who has less than three months of uninterrupted service;
(2) whose contract for a fixed term or for a specific undertaking expires;
(3) who has committed a serious fault;
(4) for whom the end of the contract of employment or the layoff is a result of superior force.

Employers and employees cannot contract out of the minimum standards of the LSA. In fact, Section 93 LSA provides that "*subject to any exception allowed by this Act, the labour standards contained in the LSA and its regulations are of public order*", which means that in an agreement or a decree, any provision that contravenes a labour standard or that is inferior thereto is absolutely null.

Nevertheless, the LSA establishes «Minimum Standards», which means that an employee can be entitled to more weeks of notice than what the LSA points out. That is in fact where the Civil Code applies.

However, please note that the prior notice of termination (given under Section 82 LSA) does not have to be added to the reasonable notice under the Civil Code.

Lastly, note that although section 2091 of the Civil Code states that an employer does not have to give notice (or indemnity in lieu of) to an employee that is terminated for serious reason, the employer will still have to pay out the notice (or indemnity in lieu of) pursuant to the LSA. Indeed, it is only when an employee is terminated for serious fault that the employer is excused from giving or paying out the notice pursuant to the LSA.

B. Justification for Dismissal

Although the Civil Code and the LSA contain provisions regarding notice of termination that must be given, employees having two or more years of service with the same employer have a certain "job protection" pursuant to section 124 LSA which reads as follows:

> ***124.*** *An employee credited with two years of uninterrupted service in the same enterprise who believes that he has not been dismissed for a good and sufficient cause may present his complaint in writing to the Commission des normes, de l'équité, de la santé et de la sécurité du travail or mail it to the address of the Commission des normes, de l'équité, de la santé et de la sécurité du travail within 45 days of his dismissal, except where a remedial procedure, other than a recourse in damages, is provided elsewhere in this Act, in another Act or in an agreement.*
>
> *If the complaint is filed with the Administrative Labour Tribunal within this period, failure to have presented it to the Commission des normes, de l'équité, de la santé et de la sécurité du travail cannot be set up against the complainant.*

This means that an employer must have good and sufficient cause in order to terminate an employee who has two or more years of service, regardless of whether he offers notice or indemnity in lieu of notice pursuant to the LSA and Civil Code.

If an employer wishes to terminate an employee's employment before that employee has reached two years of continuous service, he may do so as long as he respects the notice requirements as mentioned above.

If a complaint pursuant to section 124 LSA is granted, which means the TAT considers that the employee has been dismissed without good and sufficient cause, its powers are liberally defined. In

fact, the TAT may order the employer to reinstate the employee, to pay to the employee an indemnity up to a maximum equivalent to the wages he would normally have earned had he not been dismissed, or render any other decision it believes fair and reasonable, considering all the circumstances of the matter.

C. Mandatory Severance Pay

The concept of "Severance" does not exist in Quebec. See above for information about notice of termination and indemnity in lieu of notice of termination.

D. Use of Severance Agreements and Releases

- Releases/Waivers

The use of releases in the event of termination of employment is possible in Quebec when the employer offers more than what the employee is entitled to pursuant to minimum employment standards.

Indeed, it is quite frequent from employers to offer employees more than what they would be entitled to pursuant to the LSA in exchange for the signing of a release in order to prevent any claims from being filed against the employer.

E. Legal Challenges to Dismissal

- **Constructive Discharge**

When an employer substantially and unilaterally alters a fundamental term of the employment contract to such an extent, it can be construed as a dismissal; hence, the affected employees can file claims for wrongful dismissal.

Some examples involving an employer making substantial changes to the employment contract that resulted in constructive dismissals include:

- Reducing an employee's compensation;
- Changing hours of work;
- Demoting an employee;
- Altering the employee's reporting structure, job description or working conditions;
- Imposing a suspension; and
- Relocating an employee.

Claims for constructive dismissal may also come up in situation where an employee claims that or she was forced to resign for example in cases of alleged harassment.

- **Dispute Resolution Process /Forums**

All claims that are brought pursuant to the LSA are to be filed with the CNESST, whom will then, depending on the nature of the claim, proceed to an investigation or immediately defer to mediation if the parties agree to participate.

The mediator is provided at no cost to the parties and the mediation process must remain confidential, therefore, even if the parties do not come to an agreement, they cannot use any information or offer brought up during the course of the mediation against the other party at trial. Parties are free to attend the mediation session alone or with their representative.

If mediation fails, the mediator will defer the file to the TAT where a trial date will be set and a conciliator will be assigned to the file. Once again, the parties will have the chance to participate in an alternative resolution process with the conciliator. This is alternative and although parties are encouraged to participate, they do not have to.

If no agreement is reached in conciliation, or if the parties refused to participate in an alternative resolution process, the parties will proceed to trial before a judge of the TAT.

It is important to note that in all claims filed pursuant to the LSA, the employee is entitled to a free lawyer from the CNESST.

If the employee's claim is based on the Civil Code, recourses must be filed to civil courts (the Quebec Court or the Superior Court of Quebec, depending on the amount) and in this case employees must retain the services of an attorney.

F. Employment References

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".*

VI. Layoffs/Work Force Reductions/Redundancies/Collective Dismissals

A. Overview

The LSA provides some guidelines and mandatory rules to follow in the case of layoffs of more than six (6) months and collective dismissals.

The termination of employment by the employer (including a layoff for a period of six months or more) involving at least ten (10) employees of the same establishment in the course of two (2) consecutive months constitutes a collective dismissal under Section 84.0.1 LSA.

However, an employee who has less than three months of uninterrupted service, whose contract for a fixed term or for a specific undertaking is expiring; who has committed a serious fault; or to whom the LSA does not apply, such as senior managerial personnel, are excluded when counting whether there are at least ten (10) concerned employees. Moreover, provisions regarding collective dismissal do not apply to an establishment whose activities are seasonal or intermittent.

Layoffs of six (6) months or less are not subject to any formalities in Quebec. Indeed, the employer does not have to give a notice to employees before proceeding to such a layoff.

Regarding other work force reductions or redundancies, there are no specific rules set out in the LSA, but the employer must be sure to respect the notice periods that are applicable to any termination (mentioned above) and to use objective criteria when choosing which employee(s) is/are targeted.

That being said, as with any change to the employment relationship, it is important to note that layoffs, work force reductions, redundancies and collective dismissals can constitute claims for constructive dismissal and could claim for additional notice pursuant to the Civil Code or if he or she has more than two (2) years of seniority, he or she could file a claim for dismissal made without good and sufficient cause and ask to be reinstated. That being said, if the layoff, collective dismissal, work force reduction, redundancy is made for bona fide economic reasons and the employee(s) that was layoff off or dismissed was chosen in an objective manner, the claim will most likely not be successful.

B. Procedure

- **Mandatory Notice Periods**

Pursuant to Section 84.0.4 LSA, every employer shall, before making a collective dismissal for technological or economic reasons, give notice to the Minister of Employment and Social Solidarity within the minimum period of eight (8) weeks, where the number of employees affected by the dismissal is at least equal to 10 and less than 100. The notice must be sent by mail, and it takes effect from the date on which it is mailed.

However, it is also important to note that, in order to determine the appropriate length of notice, all employees must be considered, whether salaried, sales, unionized, non-unionized, or management personnel, except those specifically excluded by the law, such as senior managerial personnel.

In the case of a superior force or where an unforeseeable event prevents an employer from respecting the time periods for giving notice set out in section 84.0.4, the employer shall give the Minister a notice of collective dismissal as soon as the employer is in a position to do so.

The notice must contain:

(1) the name and address of the employer or establishment concerned;

(2) the sector of activity;

(3) the names and addresses of the associations of employees, where applicable;

(4) the reason for the collective dismissal;

(5) the date anticipated for the collective dismissal; and

(6) the number of employees likely to be affected by the collective dismissal.

The employer must transmit a copy of the notice of collective dismissal to the CNESST and the certified association representing the employees affected by the dismissal (where applicable). Then, the employer must post the notice in a conspicuous and readily accessible place in the establishment concerned. A notice of termination must also be given to each employee concerned by the collective dismissal.

An employer who does not give the notice prescribed by Section 84.0.4 LSA or who gives insufficient notice must pay to each dismissed employee an indemnity equal to the employee's regular wages, excluding

overtime, for a period equal to the time period or remainder of the time period within which the employer was required to give notice. In such situation, the indemnity must be paid at the time of the dismissal.

Moreover, if the notice of collective dismissal is not given within the time period stipulated in the LSA, the employer may be required to pay a fine of $1,500 per week.

Nevertheless, no employee may cumulate the latter indemnity and the indemnity provided for in Section 82 LSA: an employee shall receive the greater of the indemnities to which he is entitled.

- **Transfer of Undertakings/TUPE**

Both the Civil Code and the LSA have specific provisions regarding this situation.

Section 2097 of the Civil Code mentions that a contract of employment is not terminated by alienation of the enterprise or any change in its legal structure by way of amalgamation or otherwise. The contract is binding on the successor of the employer.

In fact, the employment contract is attached to the enterprise and will then follow the latter in situation of alienation or concession. In doing so, the intention of the Quebec legislator was to provide protection to employees in the context of alienation or concession.

In order to determine if an enterprise is alienated or conceded under Section 2097 of the Civil Code, the courts generally apply two conditions. These two conditions are:

o the continuation of the enterprise or at least a part of it;

o the existence of a legal relationship between the two employers.

Once those two conditions are met, the courts usually find that the successive employer is bound by the employment contract and the responsibilities and obligations which arise from it.

At common law, when parties sell the assets relating to a business (for example), it is generally assumed that the contracts of employment were terminated as a result of the sale and that the purchaser has to make an offer of employment to the seller's employees, which the employees are free to refuse or accept in order to continue employment with the new or successor employer.

Section 2097 of the Civil Code differs from the applicable common law usual principles, as the purchaser employer is now bound by the seller's contracts of employment with its employees and consequently, the purchaser employer does not have to make an offer of employment to the seller’s employees.

Because a concession or an alienation of an enterprise, or any change in its legal structure such as an asset purchase agreement, will not have the effect of ending or interrupting the employment of employees upon the successful completion of the transaction, the current employment will simply continue under the same conditions and will never have ended.

This will impact various matters related to the employment contract, such as the continuous service of an employee and all the recourses that are related to it.

Section 96 LSA provides that the alienation or concession of the whole or a part of an undertaking does not invalidate any civil claim arising from the application of the LSA or a regulation which is not paid at the time of such alienation or concession. The former employer and the new employer are bound solidarily in respect of that claim.

Section 97 LSA provides that the alienation or the 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.**

Practically, this means that the rights of an employee will be evaluated with regards of his link to an enterprise rather than with regards of his link to the person of an employer.

This distinction is important in the calculation of the period of «uninterrupted service» of an employee, which has an impact regarding the choices of recourses of an employee who alleges having been dismissed not for a good and sufficient cause, and also regarding the notice of termination an employee will be entitled to in case of a termination of employment.

Consequently, the alienation or the concession, in whole or in part of the undertaking, or the modification of its juridical structure, will not affect the period of «uninterrupted service» of an employee.

- **Severance Pay**

See above

- **Benefits**

Benefits shall continue during the mandatory notice periods pursuant to the LSA.

- **Severance Packages/Separation Agreements**

As previously mentioned, it is possible for employers to offer employees more than what they are entitled to pursuant to minimum employment standards in exchange for the signing of a release.

VII. Unfair Competition/Covenants Not to Compete

A. Trade Secrets

See above for more information but pursuant to section 2088 of the Civil Code. Not only does an employee have the obligation, during the course of his employment, to act with loyalty towards his employer but also, even without a non-compete covenant or any covenant in his contract of employment providing a duty of confidentiality, the employee must act diligently and with loyalty towards his ex-employer, for a reasonable period of time following the termination of his employment.

The scope of this protection is of course limited and thus the inclusion of a detailed confidentiality agreement or undertaking is often recommended.

B. Covenants Not to Compete

As previously mentioned, and discussed, the validity of non-compete covenants is governed by Section 2089 of the Civil Code.

The most important rule with respect to such a covenant is that **it has to be drafted in clear and precise terms;** the employee must exactly know the scope of the non-competition clause. In fact, where a Tribunal observes an ambiguity in the non-competition clause, it will generally invalidate it and declare it as not enforceable. Be aware that any ambiguity or doubt resulting from the interpretation of a contract containing a non-compete and/or a non-solicit clause(s) will beneficiate to the employee as the employer has the burden to prove the validity of such clauses. Consequently, he has to convince the Tribunal that the non-compete or the non-solicit covenant is reasonable.

C. Solicitation of Customers & Employees

Although section 2088 of the Civil Code imposes a duty of loyalty on the employee during the employment and for a reasonable time thereafter, it is not enough to protect an employer from an ex-employee soliciting clients or employees. Indeed, an employee's duty of loyalty is interpreted restrictively, because competition is the rule. Employers are therefore encouraged to include non-solicit clauses in the employment agreements.

Non-solicitation clauses are subject to similar legal standards as the non-compete clauses. Consequently, they have to be limited as to whatever is necessary for the protection of the legitimate interest of the employer. As previously mentioned, there is some case law that has found that non-solicitation clauses need to be limited to a certain territory; therefore, although the case law is not unanimous, we believe it is safer to include one.

D. Breach of Duty of Loyalty/Breach of Fiduciary Responsibility

If an employer believes that a former employee is in violation of his duty of loyalty, his non-compete, non-solicit or confidentiality agreement(s), the usual remedy is to ask the Superior Court of Quebec to deliver an injunction prohibiting the continuation of such violation.

An employer can also request the payment of damages, if any (i.e. loss of clients, contracts, appropriation of commercial secrets, etc.).

VIII. Personnel Administration

A. Payroll Requirements

- **Method of Payment**

See above in Compensation

- **Payment Frequency**

See above in Compensation

- **Special Record-Keeping Requirements**

Here is the timeframe that certain documents / information must be kept and which law or regulation this obligation stems from:

Employee applications and offers of employment, Employment agreements (including executive employment agreements): three (3) years (section 2925 of the Civil Code provides that a civil action is prescribed by three (3) years, if the prescriptive period is not otherwise established)

Employer/employee confidentiality agreements and Codes of Ethics: three (3) years (Section 2925 of the Civil Code)

Time sheets, payroll registers and payroll change records: three (3) years (Section 2 of the *Regulation respecting a registration system or the keeping of a register,* CQLR c N-1.1, r 6)

Basic employee information, including: Employee's name, address, social insurance number, occupational classification, date of birth, date of commencement and date of termination of the employment, Number of hours worked in each day and week, attendance reporting forms, overtime records, the employer's pay periods, all vacation and holiday time, all notices, certificates, correspondence and other documents given to or produced by the employer that related to an employee taking any type of leave, records of promotions/demotions/reassignment**:** three (3) years (Section 2 of the *Regulation respecting a registration system or the keeping of a register* CQLR c N-1.1, r 6)

Records of Employment: Six (6) years after the end of the year in respect for which the documents were kept, or until the person having a right of access has exhausted his legal remedies (Section 87 (3) of the *Employment Insurance Act,* SC 1996, c 23).

General employee files for terminated employees: three (3) years (Section 2925 of the Civil Code).

Employee non-pension benefit enrolment forms: three (3) years (Section 2925 of the Civil Code)

Employee history and Employee evaluations: three (3) years (Section 2925 of the Civil Code)

Employee medical records (including any medical certificate and any information related to an employee's return to work following a work-related illness or injury): No delay but that kind of document should be kept on a permanent basis in view of an eventual claim, long after the termination of the employment. (WCA)

Employee payroll deduction request forms: three (3) years (Section 2 of the *Regulation respecting a registration system or the keeping of a register*)

All documentation relating to the registered pension plan and supplemental pension plan maintained for employees (e.g. plan texts, amendments thereto, funding policies, services contracts, SIP&Ps, employee communications, financial statements, regulatory filings): Depending on the type of plan, either: a) Recommendation for at least four (4) years given the interpretation of the wording of the Regulation, but no mandatory time limit is stated. (Section 66 of An *Act respecting the Québec Pension Plan*. R.S.Q., chapter R-9) or b) on a permanent basis, if an employee is eligible to retirement benefits. (*Supplemental Pension Plans Act*, R.S.Q., c. R-15.1)

All individual records relating to each employee's pension entitlement (i.e. employee and employer contributions, all member elections and beneficiary designations): Depending on the type of plan, either: a) Recommendation for at least four years given the interpretation of the wording of the Regulation, but no mandatory time limit is stated. (Section 66 of An *Act respecting the Québec Pension Plan*. R.S.Q., chapter R-9) or b) on a permanent basis, if an employee is eligible to retirement benefits. (*Supplemental Pension Plans Act*, R.S.Q., c. R-15.1)

Records and books of account containing such information as will enable any contributions payable under the CPP or any contributions or other amounts that should have been deducted or paid to be determined; and any books, records or other documents, regardless of their physical form or characteristics, relating to a pension plan or to any securities, obligations or other investments in which pension fund moneys are invested (no retention period specified): Depending on the type of plan, either: a) Recommendation for at least four (4) years given the interpretation of the wording of the Regulation, but no mandatory time limit is stated. (Section 66 of An *Act respecting the Québec Pension Plan*. R.S.Q., chapter R-9) or b) on a permanent basis, if an employee is eligible to retirement benefits. (*Supplemental Pension Plans Act*, R.S.Q., c. R-15.1)

Records relating to workers compensation claims/settlements, including: Accident reports, Decisions, Appeals or Workers compensation related assessments and audit results: No delay but that kind of document should be kept on a permanent basis in view of an eventual claim, long after the termination of the employment. (WSA)

Records relating to complaints or potential complaints pursuant to the *Canadian Human Rights Act:* three (3) years (Section 2925 of the Civil Code)

Records relating to incentive plans: three (3) years (Section 2925 of the Civil Code)

Training program, training agreements, bills, and contracts relating to training: Six years after the last year to which the information pertains. *Regulation respecting eligible training expenditures, RRQ, c D-8.3, r 3 section 4* (An *Act to promote workforce skills and development and recognition, R.S.Q., c. D-8.3*).

Documents required by a request for access or for rectification purposes: In the event a request for access is denied, the person having the information in its possession shall retain the information in order for the claimant to be able to exercise the rights granted under the Act. *An Act respecting the protection of personal information in the private sector* (the "PSPA") R.S.Q. c. P-39.1, section 36.

Income Tax records : six (6) years following the years related to the document or following the completion of the tax reports (which means 7 years). (*Tax Administration Act*, RSQ c A-6.002 (section 35.1)). *Income Tax Act*, RSC 1985, c 1 (5th Supp) (section 230(4))

It is important to keep in mind that section 36 of the PSPA explicitly provides that the person holding information that is the subject of a request for access or rectification must, if he does not grant the request, retain the information for such time as is necessary to allow the person concerned to exhaust the recourses provided by law.

Finally, it is worth noting that section 12 of the PSPA explicitly provides that once the object of a file has been achieved, no information contained in it may be used otherwise than with the consent of

the person concerned, subject to the deadline prescribed by law or by a retention schedule established by Government regulation.

B. Required Postings

There are not many general statutory obligations for postings in Quebec workplaces. The CNESST can however specifically make a demand to an employer who will have to oblige.

However, an employer must post the notice of collective dismissal that was sent to the CNESST and to the certified association representing the employees affected by the dismissal in a conspicuous and readily accessible place in the establishment concerned.

We note that although there is no explicit requirement to post such policy, since January 1st, 2019, the employer's harassment policy must be accessible to all employees.

Lastly, Quebec employers also have an obligation to post certain information pursuant to the HSA. Examples of such postings include the names of the employer's personnel members that are responsible for health and safety matters, all information transmitted by the CNESST, the names of the members of the health and safety committee, any remedial order that has been rendered by a health and safety inspector.

C. Required Training

With the exception of position specific training in areas such as safety sensitive positions, there are no specific statutory training obligations for employees or managers. Nevertheless, there are general statutory obligations in such areas as health and safety that include employees being adequately trained to ensure their own safety and well-being.

D. Meal and Rest Periods

Employees are entitled to a rest period of thirty minutes, without pay, for meals, after a period of five consecutive hours of work. That period shall be remunerated if the employee is not authorized to leave his work station.

E. Payment Upon Discharge or Resignation

An employee whose employment terminates must be paid all wages due and owing, including all accrued and unused vacation time. See above for additional details regarding statutory notice and payment thereof.

F. Personnel Records

- **Right of Access**

Employees in Quebec have the statutory right to inspect their personal records at reasonable intervals and at reasonable times.

The Civil Code contains numerous provisions on the administration of information pertaining to individuals, as well as the protection of their reputation and privacy. In addition, a law has been adopted complementing these provisions. The PSPA states that "personal information" is any information that relates to a natural person and allows that person to be identified. Sections 35 to 41 of the Civil Code and the PSPA enshrine an individual's right to respect for his reputation and privacy, and prohibit invasion of that privacy.

The Civil Code also provides that anyone who establishes a file on another person must have a serious reason for doing so, and may only gather information relevant to the stated objective of the file. Relevance has been interpreted as referring to the concept of "necessity."

The communication of such information to third persons without either the consent of the person being investigated or authorization by law is prohibited. There are, however, a few exceptions to the rule, including communication to:

- The attorney of the person holding the file;
- A person responsible, by law, for the prevention, detection, and repression of crime or statutory offences who requires it in the performance of his or her duties; or
- A person to whom it is necessary to communicate the information if it is needed for the prosecution of an offence.

Other exceptions relate to:

- Communication to a person to whom it is necessary to communicate under the law or a collective agreement, and who requires it in the performance of his or her duties;
- A public body in compliance with the representatives' functions or the implementation of a program;
- A person or body having the power to compel communication;
- In cases of emergency where life, health, or safety is threatened;
- An authorized person in the context of a study or record, or for statistical purposes;
- A person authorized by law to recover debts; and
- Third parties to whom nominative lists are communicated in accordance with the PSPA.

Authorized personnel within an enterprise and agents can communicate the information to each other on a need-to-know basis without a specific consent if the information is needed for the performance of their duties.

There also are provisions affirming an individual's right to examine any file that contains information about him or her, and to have the information rectified at no charge.

The PSPA describes the process by which an individual may examine his or her file and access the personal information contained therein. Under the PSPA, it is possible for an employer to refuse to communicate personal information to a person about whom the information concerns if the information likely would: 1) hinder an inquiry intended to prevent, detect, or repress criminal or statutory offences conducted by the employer's internal security service, on the employer's behalf,

or for the same purpose by an external service, a detective, or security agency in accordance with the Act respecting detective or security agencies; or 2) affect judicial proceedings in which either person has an interest. The PSPA also imposes a series of obligations on persons collecting information, including the implementation of various measures designed to ensure confidentiality. Of particular note are those obligations for obtaining consent by the person concerned regarding the communication or use of the information in a file; the notations that are to be made when files are consulted; and the designation of persons to whom individuals may apply in order to gain access to their file and, if necessary, to have it rectified.

The PSPA gives the Commission d'accès à l'information the power to examine and rule on disputes.

Employers should request job applicants, clients, and suppliers with whom they have dealings to consent to the verification of references or any other personal information given, as well as to a personal information agent being contacted for a background check. Although these checks can be legal, employers in particular must be prudent with the information they receive, and the decisions made based on that information should not be tainted by discrimination.

On the federal level, the House of Commons adopted Bill C‘6, the *Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5* ("PIPEDA").

PIPEDA sets forth the rules governing the collection, use, and disclosure of personal information in the private sector. It also applies to all organizations that are federally regulated (such as banks, railways, and airlines) and to all organizations that normally are subject to provincial legislative jurisdiction in the course of commercial activities conducted in more than one province (including Quebec organizations). Personal information is defined as any information about an identifiable individual with the exception of the name, title, or business address or telephone number of an employee of an organization. Part 2, entitled "Electronic Documents," provides for the use of electronic alternatives in cases where federal laws require the creation, production, furnishing, or filing of "paper documents" of various types. Other parts deal with corresponding changes to other statutes, such as the Canada Evidence Act, R.S.C. 1985, c. C-5.

PIPEDA provides that the Governor in Council may exempt an organization or activity from its application where there is, as in Quebec, legislation in a province substantially similar to the privacy legislation of the PIPEDA.

Please note that Québec’s Bill 64, *An Act to modernize legislative provisions as regards the protection of personal information*, was adopted unanimously, on September 21, 2021, receiving assent on September 22, 2021.

To comply with Bill 64, organizations must: i) establish data governance processes, including ones to assist individuals in exercising new privacy rights, ii) develop corporate data management policies, iii) adopt technological solutions to de-index or transfer personal information upon request; and iv) issue internal guidelines to support staff and service providers in the implementation of the new privacy regime.

Now although these changes will only come into force in two (2) or three (3) years following its adoption, organizations should immediately have an internal or external individual, identify which changes their business needs to make to ensure compliance with Bill 64, the resources required, and the process to follow.

- **Retention Requirements**

See above in subsection A

IX. Privacy

A. Drug and Alcohol Testing

Due to the fact that drug testing is an intrusion into employees' privacy rights, as well as their right to be free from discrimination on the basis of disability under human rights legislation, the circumstances under which an employer will be allowed to impose drug testing have been defined restrictively.

The nature of the job is crucial when determining if drug testing can be required. Drug testing is permitted regardless of the nature of the job in only two instances:

- Pre-employment drug testing can be asked only of applicants for safety-sensitive positions.
- During employment, in safety-sensitive positions, the employer may conduct drug testing:

  i) Where there is reasonable cause to suspect (objective observations) that the employee is performing his or her duties under the influence of drugs;

  ii) Following any significant accident or incident (near miss);

  iii) To qualify for a safety-sensitive position;

  iv) As a condition of a return-to-work agreement, negotiated with the employee's bargaining agent where applicable, following an employee's admitted drug problem.

In all of the above situations, the employer has a duty to accommodate employees with drug dependency problems who test positive, to the point of undue hardship. The scope of the duty to accommodate within this context must be determined on a case-by-case basis, but could include, for example, that due consideration be given to measures other than discharge, or that the employee be afforded access to an Employee Assistance Program. Accordingly, the consequences and sanction of a positive drug test cannot be automatic and predetermined.

We recommend that employers adopt an explicit policy about dealing with drug and alcohol related issues.

B. Off-Duty Conduct

Although Quebec employers may not usually discharge or discriminate against an employee for engaging in unlawful conduct away from the employer's premises, off-duty conduct could be a proper ground for discipline, or even discharge, if such conduct has a sufficient connection or nexus with the employee's regular duties. Although there is no statutory justification for a relationship between job security and off-duty conduct, case law in individual contracts of employment, as well as in the unionized environment, has shown that such a principle exists and can be applied.

C. Medical Information

Paragraph F of section X applies to this type of information.

However, we note that an employer's right to ask for medical information is limited and should not be done systematically, rather it should be done in limited circumstances, when justified.

D. Searches

Although Quebec has not imposed any specific statutory restrictions on the search of employee property brought on to company premises, the Charter contains specific protections of employees' dignity (section 4), respect for private life (section 5), the peaceable enjoyment of property (section 6), and the respect for private property (section 8). These protections also apply to the workplace. As such, clear written policies that stipulate the express or implied consent of a search under reasonable grounds should be communicated to employees as a condition of employment.

E. Lie Detector Tests

Quebec does not have any specific statutory provisions regarding the issue of lie detector tests however, there could certainly be human rights and/or privacy issues.

F. Fingerprints

Although no Quebec statutory provisions exist regarding fingerprints, the discussion of privacy Paragraph F of section X apply to the collection of fingerprints, such that this type of an invasive process likely could not be justified as the collection of "necessary information" unless the employer is able to justify needing this information.

That said, should an employer collect fingerprints, the *Act to establish a legal framework for information technology* requires anyone intending to use biometrics, such as fingerprints, to disclose it to the Commission for access to information:

- If he verifies or confirms identity by means of a process that captures biometric characteristics or measurements;
- If he creates a bank of biometric characteristics or measurements - in this case, the disclosure must be made at least 60 days before the bank is put into service.

G. Social Security Numbers

Paragraph F of section X applies to the collection of social security numbers, in that such collection may be legally justified only if absolutely necessary. For example, collecting this type of information would be required for payroll purposes, but would not be justified simply as a means of establishing the employee's identity.

H. Surveillance and Monitoring

Although there are no specific statutory provisions pertaining to surveillance and monitoring in Quebec law, case law on this subject has shown that such activity is legitimate where reasonably necessary and when it is conducted in areas where employees do not have a reasonable expectation of privacy.

As such, the communication of clear policies on such issues as e-mail correspondence are essential to informing employees that they should not have a reasonable expectation of privacy in terms of their use of company computers. Despite the existence of any policy, in order to be justified, any surveillance or monitoring must be conducted reasonably.

Additionally, since September 2023, the PSPA requires organizations to inform the individual when identification, location or profiling technology is used and of the means available to activate these functions.

I. Cannabis (medical and recreational use)

Medical and recreational use of cannabis should be regulated in a clear alcohol and drug policy. The information mentioned at paragraph A of this section applies to cannabis as well.

J. Social Media

Although no Quebec statutory provisions exist regarding the use of social media, an employee's duty of loyalty will extend to his or her behavior on social media. That being said, we believe employers should adopt clear policies to regulate what employees are entitled to say or mention on their social media and the consequences if such policies are not respected.

K. Weapons/Workplace Violence Policy

Contrary to other Canadian jurisdictions, there is no statutory obligation for an employer to adopt an explicit policy against violence in the workplace. However, employers often mention that they have a zero-tolerance policy for violence in the workplace in their harassment policies.

Additionally, in order to comply with the obligations, set out at section 51 of the HAS which states that "*every employer must take the necessary measures to protect the health and ensure the safety and physical well-being of his workers"*, an employer obviously needs to take the means to prevent and put a stop to violence in the workplace.

X. Employee Injuries and Workers Compensation

A. Work Related Injuries

The purpose of *the* WCA is to provide compensation for employment injuries and the consequences they entail for beneficiaries.

The WCA creates a regime of insurance which provides compensation for employment injuries due to industrial accident and occupational diseases.

This regime of insurance for workplace injuries and occupational diseases takes away an employee's right to sue his or her employer in court for a workplace injury. This no-fault workers' compensation plan is financed by all employers in Quebec according to a pattern identical to the one governing insurance companies.

The process of compensation for employment injuries includes provision of the necessary care for the consolidation of an injury, the physical, social and vocational rehabilitation of a worker who has suffered an injury, the payment of income replacement indemnities, compensation for bodily injury and, as the case may be, death benefits.

An injury that happens at the workplace while the worker is at work is presumed to be an employment injury. **Once the injury has healed**, the worker will receive compensation as long as he requires rehabilitation that will enable him to resume his job or, if that is not possible, to take on an equivalent or suitable job.

Throughout this process, a claims officer or rehabilitation counsellor will deal directly with the worker. The worker may contact either of them at any time to discuss his needs or seek information.

The indemnity paid by the CNESST is equal to 90% of the worker's net income, calculated on the basis of his gross income. Gross income may not exceed the maximum yearly insurable earnings. The *Table of Income Replacement Indemnities*, published every year by the CNESST, specifies the amounts payable to a worker based on his income and family situation (under income tax laws). However, an injury or a disease arising solely as a result of the gross and wilful negligence of the worker who is the victim thereof is not an employment injury unless it ends in his death or causes him severe permanent physical or mental impairment.

If the worker is unable to perform his job as the result of an employment injury, the law guarantees him financial support until he can resume his job or take on an equivalent or suitable job.

The income of a worker suffering from an occupational disease is also protected. The procedure and terms and conditions are similar to those described for an industrial accident, except for certain details.

All medical assistance costs associated with an employment injury are paid by the CNESST.

To protect the right to return to work, the CNESST makes every effort to maintain the employment relationship between the worker who sustains an employment injury and his employer. This ongoing contact better enables the worker to provide for his financial and professional future.

To facilitate the worker's return to work, the prompt intervention and cooperation of all parties concerned — the worker, his representatives, his employer, the physicians and the CNESST — are essential.

The right to rehabilitation is in line with this approach, as it is aimed at same objective: enabling the worker to return to work.

The right to return to work obliges the employer to reinstate a worker who is able to resume his job or hold an equivalent position, and to pay his salary and associated benefits. If, however, a worker is unable to resume his job or hold an equivalent position because of an employment injury, he is entitled to the first suitable job available at his employer's establishment, subject to any seniority rules included in his collective agreement.

Pursuant to the WCA, no employer may dismiss, suspend or transfer a worker or practice discrimination or take reprisals against him, or impose any other sanction upon him because he has suffered an employment injury or exercised his rights under this the WCA.

A worker who believes that he has been the victim of such sanction or action may, as he elects, resort to the grievance procedure set down in the collective agreement applicable to him or submit a complaint to the CNESST.

Section 32 of the WCA provides the following:

*"**32.** No employer may dismiss, suspend or transfer a worker or practice discrimination or take reprisals against him, or impose any other sanction upon him because he has suffered an employment injury or exercised his rights under this Act.*

A worker who believes that he has been the victim of a sanction or action described in the first paragraph may, as he elects, resort to the grievance procedure set down in the collective agreement applicable to him or submit a complaint to the Commission in accordance with section 253."

Section 253 of the WCA provides that if it is shown to the satisfaction of the CNESST that the worker was the object of a sanction or action referred to in Section 32 within six months of the date on which he had suffered an employment injury or the date on which he had exercised a right conferred on him by the WCA, there is a presumption in his favour that the sanction was imposed on him or the action was taken against him because he had suffered an employment injury or had exercised that right. Then, the employer must prove that the sanction was imposed or the action was taken in respect of the worker for another good and sufficient reason.

If the presumption in favour of the worker applies, the CNESST may order the employer to reinstate the worker in his employment with all his rights and privileges, and to pay him his salary or wages.

B. Non-work-related injuries

See above for information about statutory leaves.

XI. Unemployment Compensation

A. Eligibility

Canada has a universal employment insurance plan that provides benefits to eligible employees for a certain period of time after the termination of their employment. This plan is administered by the Canada Employment Insurance Commission pursuant to the *Employment Insurance Act*.

Eligibility depends on different factors, such as the type of employment insurance benefits the person is applying for and the region in which he or she lives.

B. Procedure

The person must apply directly on the Government of Canada website once their record of employment has been issued.

XII. Health and Safety

A. Overview

The HSA contains various provisions for health and safety in the workplace. The object of the HSA is the elimination, at the source, of dangers to the health, safety and physical well-being ofworkers. The HSA provides mechanisms for the participation of workers, workers' associations, employers and employers' associations in the realization of its object.

Every employer must see that a prevention program for each establishment under his authority is implemented, in order to eliminate, at the source, risks to the health, safety and physical well-being of workers.

The CNESST administers the Occupational Health and Safety Plan. It is concerned, for example, with preventing employment injuries; however, it also acts as public insurer for both workers and employers, providing them with the services to which they are entitled.

the CNESST promotes occupational health and safety, supports workers and employers in their efforts to achieve a healthier, risk-free work environment, inspects work premises, sees to the funding of the Plan through the premiums it collects from employers, compensates workers who sustain an injury as a result of an industrial accident or occupational disease, ensures that workers receive the medical assistance they require in light of their condition and sees to it that workers who suffer permanent physical or mental impairment due to an employment injury benefit from rehabilitation services.

To fulfill its role, the CNESST not only relies on the cooperation of workers and employers, but also on the collaboration of the health, research, education and other sectors.

Employers and workers are in charge of occupational health and safety in their work environment; however, the CNESST inspectors are responsible for ensuring that the law and regulations are respected at establishments and on work sites.

An inspector intervenes when a complaint is made or a serious industrial accident takes place. He can visit the workplace for other reasons, e.g. to support the employer or workers in their prevention efforts, render a decision when a worker exercises his right of refusal to work, carry out a general inspection of the health and safety measures, or encourage the company to eliminate specific hazards targeted by the CNESST.

General obligations of the employer

The HSA provides that employers must take the necessary measures to protect the health and ensure the safety and physical well-being of his workers.

The employer must, in particular:

- identify, control and eliminate hazards to workers;
- ensure the safety of the equipment, tools and work methods in its facilities, and to make sure these are properly used or adopted by workers;
- inform workers of any job-related risks;
- provide workers with the necessary training to ensure they can safely perform their tasks;
- supervise the work of employees and ensure adherence to safety standards;
- offer medical attention (first aid) on site;
- develop a prevention program.

General obligations and rights of a worker

Obligations under the HSA

A worker must, notably:

- become familiar with the prevention program applicable to him;
- take the necessary measures to ensure his health, safety or physical well-being;
- see that he does not endanger the health, safety or physical well-being of other persons at or near his workplace;
- undergo the medical examinations required by the HSA and the regulations;
- participate in the identification and elimination of risks of work accidents or occupational diseases at his workplace;
- cooperate with the health and safety committee and, where such is the case, with the job-site committee and with any person responsible for the application of this Act and the regulations.

Right to refuse to perform work

A worker is entitled to refuse work that he has reason to believe might put him or someone else in danger. A worker may not exercise this right, however, if it jeopardizes the health or safety of another person. As soon as a worker exercises his right of refusal, he must notify his immediate superior or his employer thereof and give the reasons for this action. He must remain available on the premises to perform other work, if necessary.

The immediate superior or the employer must then call upon the safety representative to look into the problem and come up with possible solutions. If the establishment does not have a safety representative or if he is unavailable, the immediate superior or the employer must call upon a union representative or an employee designated by the worker exercising his right of refusal. If the employer and the safety representative cannot agree that there is a hazard or how to correct the situation, either may request the intervention of a CNESST inspector.

The worker may also call upon an inspector if he is not satisfied with the conclusion reached by the employer and safety representative. The inspector must decide as quickly as possible whether or not such a hazard exists. His decision must be implemented, even if the parties are not in agreement. However, a request can be made to have this decision reviewed by the CNESST, at the regional office concerned.

It should be noted that, under certain circumstances, the employer may ask another employee to replace the worker exercising his right of refusal. However, the employee must be advised of the worker's action and his reasons for such action, and may, in turn, refuse to do the work as well.

A worker may not be penalized for exercising his right of refusal. He will continue to draw his salary and may not be dismissed or otherwise disciplined unless he abuses his right. In such a case, the burden of proof rests with the employer.

Right of a pregnant or breast-feeding worker

A pregnant or breast-feeding worker benefits from special protection. If her working conditions endanger her health or that of her unborn or nursing child, she has the right to be reassigned immediately to another job that does not involve such hazards and that she is able to perform.

If her workstation cannot be modified or she cannot be assigned to another station, she has the right to stop working temporarily and receive compensation from the CNESST. This is not a maternity leave, but rather a preventive program aimed at allowing the worker to continue her job in complete safety. The employer can achieve this objective in many ways, i.e. by:

- eliminating the hazard at source;
- modifying the worker's job;
- adapting her workstation;
- reassigning the worker to another job or workstation.

To exercise her right to a safe pregnancy, the worker must ask a physician to fill out the form *Preventive Withdrawal and Re-assignment Certificate for a Pregnant or Breast-feeding Worker*.

The worker may stop working if the employer cannot immediately eliminate the hazards at source, adapt or modify work conditions deemed dangerous, or reassign the worker to another job. She will receive compensation until such time as she is offered a safe job by the employer, gives birth, or finishes breastfeeding.

The HSA provides that a person who contravenes to the HSA or a regulation or refuses to conform to, or incites a person not to conform to, a decision or order rendered under the HSA or the regulations, is guilty of an offence and liable,

- in the case of a natural person, to a fine of not less than $600 nor more than $1,500 for a first offence, a fine of not less than $1,500 nor more than $3,000 for a second offence, and a fine of not less than $3,000 nor more than $6,000 for a third or subsequent offence; and

- in the case of a legal person, to a fine of not less than $1,500 nor more than $3,000 for a first offence, a fine of not less than $3,000 nor more than $6,000 for a second offence, and a fine of not less than $6,000 nor more than $12,000 for a third or subsequent offence.

The HSA also provides that a person who, by an act or omission, does anything that directly and seriously compromises the health, safety or physical well-being of a worker is guilty of an offence and liable,

- in the case of a natural person, to a fine of not less than $1,500 nor more than $3,000 for a first offence, a fine of not less than $3,000 nor more than $6,000 for a second offence, and a fine of not less than $6,000 nor more than $12,000 for a third or subsequent offence;

- in the case of a legal person, to a fine of not less than $15,000 nor more than $60,000 for a first offence, a fine of not less than $30,000 nor more than $150,000 for a second offence, and a fine of not less than $60,000 nor more than $300,000 for a third or subsequent offence.

B. Regulatory Requirements

- **Social Elections**

N/A

- **Works Councils**

N/A

- **Health and Safety Committee**

The HSA and its regulations are quite explicit with respect to the rights and responsibilities of health and safety representatives and committees.

It is important to note that Bill 59 (the *Act to modernize the occupational health and safety system*) modernized some of the provisions relating to health and safety representatives and committees and that these amendments came into force on April 6, 2022. Consequently, one must rely on the Bill itself and no longer on the HSA to know what currently applies.

Here is a summary of the new rules that apply:

First, Bill 59 provides that as of April 6, 2022, all establishments that do not already have prevention and participation mechanisms in their workplace will have to implement the interim regime of prevention and participation mechanisms. The interim system of prevention and participation mechanisms is put in place to prepare workplaces for the implementation of the prevention program or action plan. It also introduces participation mechanisms in workplaces such as

- the health and safety committee
- the health and safety representative
- the health and safety liaison officer

The interim regime for prevention and participation mechanisms will continue until the legislative and regulatory provisions on prevention mechanisms come into force. No date has yet been set for this, but the CNESST has announced that this will be done by October 2024.

Which prevention program or approach and which obligations apply to the employer in question depends on its priority group and the number of employees per establishment. These prevention programs are generally designed to

- make workplaces safe and eliminate hazards at the source
- structure and organize the prevention process
- identify the risks present in the workplace
- analyze the risks in the workplace
- prioritize prevention actions
- select preventive measures adapted to the work environment to correct and control the risks
- energize the occupational health and safety committee and encourage worker participation
- meet legal or contractual obligations

For more information on this, the CNESST website remains a very useful resource: https://www.cnesst.gouv.qc.ca/fr/prevention-securite/organiser-prevention/faire-un-programme-prevention/programme-prevention but here is a summary of the interim plan on prevention and participation mechanisms:

Establishments with 20 or more workers must:

- record the identification and analysis of risks that may affect workers' health, including chemical, biological, physical, psychological, ergonomic and psychosocial risks related to work, as well as those that may affect their safety
- establish a health and safety committee

- designate at least one health and safety representative

Establishments with fewer than 20 workers must:

- record the identification of risks that may affect workers' health, including chemical, biological, physical, psychological, ergonomic and psychosocial risks related to work, as well as those that may affect their safety
- designate a liaison officer

For employers who have several establishments, if the activities are of the same nature, an approach that applies to some or all of these establishments may be used. The employer must carry out a risk identification and analysis which must take into account all the activities carried out in the establishments of the group. A health and safety committee and at least one health and safety representative for the whole of such covered establishments must be formed or designated in these circumstances.

XIII. Trade Unions – Industrial Relations

A. Overview

The **Labour Code**, is the piece of legislation governing collective bargaining rights of employee and unionization process. It provides notably the right of an employee to belong to the association of his or her choice and to participate in its formation, activities and management.

The Labour Code prevents an employer from interfering in any manner in the formation or activities of an association of employees. It also gives protection to employees who are penalized, treated, suspended or dismissed because of their union's activities.

The Labour Code also describes the certification procedure. In short, any association of employees comprising the absolute majority of the employees of an employer (50% + 1) is entitled to be certified given that all the procedural requirements are met by the petitioner's association.

Once it obtained certification under the Labour Code, an employee's association may begin the bargaining process with the employer. Once the notice to bargain is given, an employer shall not change the condition of employment without the written consent of the petitioning association.

Negotiation must be carried on diligently and in good faith.

The Labour Code also contains provisions regulating the right for an employee's association to strike and the right of an employer to lock-out.

- **Favored/Disfavored by Government**

Unions are neither favored or disfavored by the government.

- **Prevalence of Trade Unions**

Quebec is the province with the second highest union coverage rate in Canada. In 2022, Quebec had a 38.8% rate.

- **Special Requirements (e.g. US-Right to Work)**

N/A

- **Works Council**

N/A

- **Challenges for a Unionized Business**

N/A

B. Right to Organize/Process of Unionization

Certification Process

A petition for certification can be filed at any time, in the case of a group of employees not represented by a certified union. The petition must indicate which group of employees the union wishes to represent (i.e. the bargaining unit). For example: "*All employees of the (name of the employer), excluding all department heads, maintenance department and front office employees*".

Certain people are excluded from bargaining units: for example, is not an "employee" pursuant to the Labour Code, and therefore cannot join an union: "A person who, in the opinion of the TAT, is employed as a manager, superintendent, foreman or representative of the employer in his relations with his employees."

Key points about a campaign:

- An organizing campaign can be conducted entirely in secret;
- In Quebec, union cards are the KEY to the union's success;
- The employer can never have access to union cards;

Chronology:

- Employees sign applications for membership (union cards) and pay initial dues, an amount of not less than $2.00, within the twelve months preceding the filing of the application for certification;
- An application is filed with the TAT;
- Upon receipt of such an application for certification, the TAT sends a copy to the employer;
- The employer must post such petition for certification in a conspicuous place the day following its receipt;
- The employer must post the complete list of employees in a conspicuous place within five (5) days following the receipt of the petition for certification. You must include all employees who are still on the employer's payroll without having been specifically terminated (in fact, this list includes employees who are not actively at work, such as laid off employees);
- If the employer does not agree with the bargaining unit applied for (if the employer believes that the bargaining unit proposed is not appropriate), he must, within fifteen days of the receipt of the application, set forth his reasons and propose the unit he thinks suitable;
- Disagreement on scope of the unit engenders a hearing before the TAT.

Automatic certification

- If the union has the absolute majority of the employees in the bargaining unit (50% + 1 of signed union cards);
- In order to attest such majority, a Labour relations officer is sent by the TAT (independent party) on the enterprise's premises and meets, if necessary, with some of the employees targeted by the bargaining unit;
- The employer is authorized to communicate with the Labour relations officer in order to discuss his visit within the enterprise and to address the issues that he believes the officer needs to verify in the circumstances (i.e.: the employer has been told that someone has used intimidation or threats in order to induce an employee to become a union member);
- If the Labour relations officer concludes that the union has the absolute majority of the signed union cards fort the employees comprised in the unit, the union will be automatically certified **(no vote will occur)**.

Certification vote

- By secret ballot whenever a union comprises between 35% and 50% of the employees in the bargaining unit.

Prohibition for employers to interfere with an employee association

Section 12 of the Labour Code explicitly prohibits interference of an employer with an employees' association. This Section reads as follows:

> *"Interfering with employees' association.*
>
> ***12. No employer**, or person acting for an employer or an association of employers, shall in any manner **seek to dominate, hinder or finance the formation or the activities of any association of employees, or to participate therein.***
>
> *Interfering with employers' association.*
>
> *No association of employees, or person acting on behalf of any such organization, shall belong to an association of employers or seek to dominate, hinder or finance the formation or activities of any such association, or to participate therein."*

The employer may communicate with its employees, but must not seek to interfere with union activities. When negotiating the renewal of a collective agreement, the employer must negotiate with the association representing the employees and not the employees themselves. An employer that wishes to communicate directly with its employees during negotiations must use due caution. The basic rule is that it must not try to influence the employees directly in the negotiation of their conditions of employment.

Sections 15 and the followings of the Labour Code provide a presumption in favour of the employee who exercised a right arising from the Labour Code that the sanction or the reprisal taken upon him was imposed because he exercised such right.

If it is shown to the satisfaction of the TAT that the employee exercised a right arising from the Labour Code, there is a simple presumption in his favour that the sanction was imposed on him or the action was taken against him because he exercised such right, and the burden of proof is upon the employer that he resorted to the sanction or action against the employee for good and sufficient reason.

The Labour Code also provides that from the filing of a petition for certification and until the right to lock out or to strike is exercised (or an arbitration award is handed down), no employer may change the conditions of employment of his employees without the written consent of each petitioning union and, where such is the case, certified union.

Where the union or the employer does not have the right to strike or to a lock-out, the conditions of employment remain in force until a collective agreement is concluded or until an arbitration award in lieu of it is rendered.

C. Managing a Unionized Workforce

Collective Bargaining

The Labour Code explicitly grants employees the right to collectively bargain and join trade unions. Actually, the Labour Code establishes procedures for the selection of a labour organization to represent a unit of employees in collective bargaining.

Collective bargaining consists of negotiations between an employer and employees, represented in bargaining by a union, in order to conclude a collective agreement which will eventually settle on the employees' conditions of employment such as wages, hours of work, seniority, grievance procedures etc.

Notice of meeting

➢ The first negotiation

Pursuant to the Labour Code, the union shall give to the employer (or the latter shall give to the union) a written notice of at least eight days of the day and hour when and the place where one party will be ready to meet the other party for the purpose of negotiating a collective agreement.

The party giving the notice shall transmit it to the other party by fax, messenger service, registered service, certified mail or by a bailiff.

If the union has not given such a notice, the notice is deemed to have been received 90 days after the date the union obtained certification. The negotiating stage begins once the notice has been received or is deemed to have been received.

Actually, the date of reception of the notice by the party to whom it is addressed is particularly important, because the right to strike or to a lock-out shall be acquired 90 days after this date, unless a collective agreement has been reached between the parties or unless, by mutual consent, the parties decide to submit their dispute to an arbitrator.

A notice of meeting which complies with the abovementioned requirements shall only be given once in order to force the other party to negotiate. All the other meetings following the beginning of the negotiation will not need such formal notice of meeting.

➢ **The renewal of a collective agreement**

In this situation, the union or the employer may give a notice of meeting within the 90 days preceding the expiration of the collective agreement or within the 90 days preceding the expiration of the arbitration award made in lieu of a collective agreement.

If no notice is given by the union or by the employer, the notice is deemed to have been received on the day of the expiration of the collective agreement or of the arbitration award made in lieu of it.
The notice shall be transmitted following the same modalities as for the first negotiation.

Duty to negotiate

Pursuant to the Labour Code, the negotiating stage begins once the notice of meeting has been received or is deemed to have been received by the other party. Then, negotiations must begin and carry on diligently and in good faith.

The duty to bargain does not require either party to agree to a proposal or make concessions. However, a party will violate its duty to bargain in good faith if it intends or tries to avoid the conclusion of a collective agreement.

Imposing improper preconditions to the collective bargaining process has been declared, by the Supreme Court of Canada, as a breach of the duty to bargain in good faith.

The lack of good faith during the negotiations can generally be revealed by the general behaviour of a party.

Trying to negotiate directly with employees will demonstrate a lack of good faith on the employer's part, as well as imposing punitive measures to employees who participated in a lawful union activity. Adopting an inflexible and intransigent bargaining position to the point of endangering the very existence of collective bargaining will necessarily constitute a breach of the duty to negotiate in good faith.

The principal purpose of the duty to bargain diligently and in good faith is concluding a collective agreement. Then, the duty to bargain in good faith will expire at the conclusion of a collective agreement or when a dispute relating to the negotiations is submitted to an arbitrator.

The intervention of a conciliation officer or the acquisition of the right to strike or to a lock-out will not put an end to the duty to bargain in good faith. In fact, the right to strike and to a lock-out should be seen as methods to reach a collective agreement. As a result, it should justify the necessity to carry on the negotiations in good faith.

Even though the duty to bargain diligently and in good faith ceases at the moment a collective agreement is reached, it could revive where a collective agreement contains a clause permitting the revision thereof by the parties.

The Labour Code provides different sanctions for the breach of the duty to bargain diligently and in good faith.

Actually, an employer who fails to acknowledge the representatives of a union as representing employees or to negotiate in good faith a collective agreement will be guilty of an offence and liable to a fine of $100 to $1,000 for each day or portion of a day during which such offence continues.

Furthermore, an employer or a union who fails to comply with any obligation or prohibition imposed by the Labour Code, such as the duty to bargain diligently and in good faith, will be guilty of an offence and liable, unless another penalty is applicable, to a fine of $100 to $500 and of $1,000 to $5,000 for any subsequent conviction.

An employer or a union who considers that the other party has breached its duty to bargain in good faith could also file a complaint with the TAT, requesting any order, decision or remedies to the TAT.

Actually, the TAT is invested with extremely broad powers: the Labour Code provides that the TAT may, notably, make any order it considers appropriate to safeguard the rights of the parties, require any person to redress any act or remedy any omission made in contravention of a provision of the Labour Code, determine any question of law or fact necessary for the exercise of its jurisdiction, render any decision it considers appropriate, etc.

Conciliation

Conciliation is not a precondition for the acquisition of the right to strike or to a lock-out. However, conciliation is a preliminary requirement before having access to the arbitration of disputes, when the parties do not reach an agreement during the negotiations of a first collective agreement.

Vote regarding the last offers made by the employer

The Labour Code provides that the TAT may, at the request of the employer and if it considers that it may foster the negotiation or making of a collective agreement, order a certified union to hold, on the date or within the time limit it determines, a secret ballot to give those of its members that are included in the bargaining unit an opportunity to accept or refuse the last offers made by the employer concerning all the matters still in dispute between the parties.

The Labour Code provides that the TAT may order the holding of such a ballot only once during the negotiation of a collective agreement, and it shall be held under the supervision of the TAT.

It is important to reiterate that the ballot will exclusively deal with the matters still in dispute between the parties.

Arbitration of disputes

Arbitration of disputes may be made on a voluntary basis, which means that it requires the consent of both parties.

However, from the moment the parties decide to have recourse to arbitration, it takes a mandatory nature: in fact, from this moment, neither of the parties will be entitled to change their minds and to recuperate their right to strike or to a lock-out. Moreover, the arbitration award will bind the parties

as if it were a collective agreement. Actually, the award shall have the effect of a collective agreement signed by the parties.

The Labour Code provides that the arbitration can be mandatory. In fact, where a first collective agreement is negotiated for the group of employees contemplated by the certification, a party may apply to the Quebec Labour Minister to submit the dispute to an arbitrator after the intervention of the conciliator has not been successful. As previously mentioned, the intervention of a conciliation officer is a precondition to arbitration of disputes.

Even if the conciliation officer has continued to assist the parties in trying to reach a collective agreement after the application for arbitration by a party, the Quebec Labour Minister may assign an arbitrator with having in mind the settlement of the dispute.

Strike and lock-out

The Labour Code recognizes the right to strike to all employees within the definition of the Labour Code. There are however some exceptions, notably for policemen and firemen.

The cessation of work can be for a short or a long period, for a determinate or an indeterminate term. Sometimes, the reality of the strike may only touch part of the work or the tasks usually executed by the employees, such as when employees specifically refuse to work in overtime or refuse to assume more complex functions.

The Labour Code also provides that no union or person acting in the interests of such a union shall order, encourage or support a slackening of work designed to limit production.

The Labour Code specifically prohibits striking so long as a union has not been certified and has not obtained the right to strike. It is also forbidden to strike during the period of a collective agreement, unless, as previously mentioned, the agreement contains a clause permitting the revision thereof by the parties.

The right to strike or to a lock-out shall be acquired 90 days after the reception of the notice of meeting transmitted by the other party in order to start negotiations for the conclusion of a collective agreement.

The Labour Code provides that no strike may be declared unless it has been authorized by secret ballot decided by the majority vote of the members of the union who are comprised in the bargaining unit and who exercised their right to vote. As a result, the union shall take the necessary measures, having regard to the circumstances, to inform its members, at least 48 hours in advance, that the ballot is to be held.

The failure to comply with the latter requirements, except the vote, shall give rise to penal sanctions.

The Labour Code defines a lock-out as "*the refusal by an employer to give work to a group of his employees in order to compel them, or the employees of another employer, to accept certain conditions of employment*". As for a strike, a lock-out implies a cessation of work by the employees. Instead of being the decision of the employees, the lock-out is triggered by the assessment of the employer. The lock-out may be total or partial, meaning that it may target only some employees comprised in the bargaining unit.

The right to a lock-out may be acquired at the same time as the right to strike, which means 90 days after the reception of the notice of meeting transmitted by the union in order to start negotiations for the conclusion of a collective agreement.

The Labour Code enumerates seven practices that an employer is prohibited to implement during a strike or a lock-out at section 109.1.

- **Dispute Resolution**

Any disputes that come up regarding the interpretation of a collective agreement shall be submitted to a grievance arbitrator in the manner provided in the collective agreement.

- **Impact on Management Rights**

Management rights will obviously be limited in unionized environments as most work conditions will be negotiated with the union.

XIV. Immigration/Labor Migration

Please reach out to our firm directly for questions related to immigration matters

XV. Additional Information

For additional information about labor and employment law in Quebec, please contact:

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Published October 2023.