



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 176

**An Act to amend the Act respecting
labour standards and other legislative
provisions mainly to facilitate
family-work balance**

Introduction

**Introduced by
Madam Dominique Vien
Minister responsible for Labour**

**Québec Official Publisher
2018**

EXPLANATORY NOTES

This bill proposes certain amendments to the Act respecting labour standards. More particularly, it increases the number of weeks of absence authorized for certain events associated with parental responsibilities. It clarifies the definition of “relative” by broadening it and provides that certain days of absence may also be taken for the benefit of persons, other than relatives, for whom an employee acts as a caregiver. In addition, it provides that certain days of absence are to be remunerated.

The bill specifies that conduct, verbal comments, actions or gestures of a sexual nature may be a form of psychological harassment.

The bill requires personnel placement agencies and recruitment agencies for temporary foreign workers to hold a licence and provides for the implementation of regulations concerning such agencies. Enterprises that retain the services of such an agency that does not hold a licence will be liable to a penal sanction. In addition, personnel placement agencies and the client enterprises that retain their services will from now on be solidarily liable to an employee for the pecuniary obligations fixed by the Act respecting labour standards.

Different wage rates based solely on employees’ employment status are prohibited, as is, in relation to pension plans or other employee benefits, differential treatment based solely on the employees’ hiring date.

The number of overtime hours that an employee is required to accept is reduced to two, an employee may refuse to work if he has not been informed of his work schedule far enough in advance, and, under certain conditions, working hours may be staggered.

Lastly, athletes whose membership in a sports team is conditional on their continued participation in an academic program are excluded from the scope of the Act respecting labour standards.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting labour standards (chapter N-1.1);
- Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20);
- Act to establish the Administrative Labour Tribunal (chapter T-15.1).

Bill 176

AN ACT TO AMEND THE ACT RESPECTING LABOUR STANDARDS AND OTHER LEGISLATIVE PROVISIONS MAINLY TO FACILITATE FAMILY-WORK BALANCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING LABOUR STANDARDS

1. Section 3 of the Act respecting labour standards (chapter N-1.1) is amended by inserting the following paragraph after paragraph 5:

“(5.1) to an athlete whose membership in a sports team is conditional on his continued participation in an academic program; or”.

2. Section 28.1 of the Act is amended by replacing “under Divisions II to III” in the first paragraph by “under Division VIII.2 of Chapter IV and Divisions I.1 to III”.

3. Section 39 of the Act is amended by adding the following paragraph at the end:

“(17) enter into an agreement, in accordance with the applicable legislative provisions, with a government department or body, with another government or an international organization, or with a body of such a government or organization, for the application of this Act and the regulations.”

4. Section 41.1 of the Act is amended

(1) by replacing “to other” and “for the sole reason that the employee usually works less” in the first paragraph by “to his other” and “solely because of the employee’s employment status, and in particular because the employee usually works fewer”, respectively;

(2) by striking out the second paragraph.

5. The Act is amended by inserting the following section after section 41.1:

“**41.2.** No personnel placement agency may remunerate an employee at a lower rate of wage than that granted to the employees of the client enterprise who perform the same tasks in the same establishment solely because of the employee’s employment status, and in particular because the employee is remunerated by such an agency or usually works fewer hours each week.”

6. Section 42 of the Act is amended by replacing everything after “sealed envelope” in the first paragraph by “, by cheque or by bank transfer.”

7. Section 50 of the Act is amended by replacing “80, 81, 81.1 and 83” in the fourth paragraph by “79.2, 79.16, 80, 81, 81.1, 83 and 84.0.13”.

8. Section 53 of the Act is amended

(1) by replacing “the norm provided in the Act” in the first paragraph by “the standard provided for in the law”;

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

“The employer and the employee may also agree, on the same conditions, on the staggering of working hours on a basis other than a weekly basis, without the authorization provided for in the first paragraph being necessary. In such a case, the following conditions also apply:

(1) the agreement, with a maximum term of six months, is evidenced in writing at least 30 days before the beginning of the first period over which working hours are staggered under the agreement;

(2) the hours are staggered over a maximum period of four weeks; and

(3) a work week may not exceed the standard provided for in the law or the regulations by more than 10 hours.”

9. Section 59.0.1 of the Act is amended, in the first paragraph,

(1) by replacing “four” in subparagraph 1 by “two”;

(2) by adding the following subparagraph after subparagraph 2:

“(3) if he was not informed at least five days in advance that he would be required to work, unless the nature of his duties requires him to remain available or his services are required within the limits set out in subparagraph 1.”

10. Section 64 of the Act is amended by inserting “or if such a holiday does not coincide with the employee’s regular work schedule” after “section 60”.

11. Section 69 of the Act is amended

(1) by replacing “five” by “three”;

(2) by replacing “employer,” by “employer”.

12. Section 74.1 of the Act is amended

(1) by replacing “to other” by “to his other”;

(2) by replacing “for the sole reason that the employee usually works less” by “solely because of the employee’s employment status, and in particular because the employee usually works fewer”.

13. Section 75 of the Act is amended

(1) by inserting “or in the manner applicable for the regular payment of his wages” at the end of the first paragraph;

(2) by replacing “in the case of a farm worker hired on a daily basis” in the second paragraph by “where it is warranted by the seasonal or otherwise intermittent activities of an employer”.

14. The heading of Division V.0.1 before section 79.1 of the Act is replaced by the following heading:

“ABSENCES OWING TO SICKNESS, AN ORGAN OR TISSUE DONATION, AN ACCIDENT, DOMESTIC VIOLENCE OR A CRIMINAL OFFENCE”.

15. Section 79.1 of the Act is amended by replacing “or an accident” in the first paragraph by “, an accident or domestic violence of which the employee has been a victim”.

16. Section 79.2 of the Act is amended

(1) by replacing “An employee must be credited with three months of uninterrupted service to take advantage of section 79.1, and the absence shall be without pay. In addition, the employee must” in the first paragraph by “An employee must”;

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

“The first two days taken annually under section 79.1 shall be remunerated. The employee becomes entitled to such remuneration on being credited with three months of uninterrupted service, even if he was absent previously.”

17. The Act is amended by inserting the following section before section 79.7:

“79.6.1. For the purposes of sections 79.7 to 79.8.1, “relative” means, in addition to the employee’s spouse, the child, father, mother, brother, sister and grandparents of the employee or the employee’s spouse as well as those persons’ spouses, their children and their children’s spouses.

The following are also considered to be an employee’s relative for the purposes of those sections:

(1) a person having acted, or acting, as a foster family for the employee or the employee’s spouse;

(2) a child for whom the employee or the employee's spouse has acted, or is acting, as a foster family;

(3) a tutor or curator of the employee or the employee's spouse or a person under the tutorship or curatorship of the employee or the employee's spouse;

(4) an incapable person having designated the employee or the employee's spouse as mandatary; and

(5) any other person in respect of whom the employee is entitled to benefits under an Act for the assistance and care the employee provides owing to the person's state of health."

18. Section 79.7 of the Act is amended

(1) in the first paragraph,

(a) by striking out “, without pay.”;

(b) by replacing “of the employee's spouse, father, mother, brother, sister or one of the employee's grandparents” by “of a relative or a person for whom the employee acts as a caregiver, as attested by a professional working in the health and social services sector”;

(2) by inserting the following paragraph after the second paragraph:

“If it is warranted, by the duration of the absence for instance, the employer may request that the employee furnish a document attesting to the reasons for the absence.”

19. Section 79.8 of the Act is amended by replacing the first paragraph by the following paragraph:

“An employee may be absent from work for a period of not more than 16 weeks over a period of 12 months where he must stay with a relative or a person for whom the employee acts as a caregiver, as attested by a professional working in the health and social services sector, because of a serious illness or a serious accident. Where the relative or person is a minor child, the period of absence is not more than 36 weeks over a period of 12 months.”

20. The Act is amended by inserting the following section after section 79.8:

“79.8.1. An employee may be absent from work for a period of not more than 27 weeks over a period of 12 months where he must stay with a relative, other than his minor child, or a person for whom the employee acts as a caregiver, as attested by a professional working in the health and social services sector, because of a serious and potentially mortal illness, attested by a medical certificate.”

21. Section 79.10 of the Act is amended by replacing “52” by “104”.

22. The Act is amended by inserting the following section after section 79.10:

“79.10.1. An employee may be absent from work for a period of not more than 104 weeks by reason of the death of the employee’s minor child.”

23. Section 79.11 of the Act is amended

(1) by replacing “52” by “104”;

(2) by replacing “or child” by “, father, mother or child of full age”.

24. Section 79.12 of the Act is amended by inserting “of full age” after “child”.

25. Section 79.13 of the Act is amended

(1) by replacing “79.9 to 79.12” in the first paragraph by “79.9, 79.10, 79.11 and 79.12”;

(2) by striking out “, if that person is the spouse or a child of full age,” in the second paragraph.

26. Section 79.15 of the Act is amended

(1) by striking out “52 or” in the first paragraph;

(2) in the second paragraph,

(a) by striking out “52 or”;

(b) by replacing “it is the longer period that applies,” by “the maximum period of absence for those two events may not exceed 104 weeks”.

27. Section 79.16 of the Act is amended by adding the following paragraph at the end:

“The right to two remunerated days provided for in the third paragraph of section 79.2 applies in the same manner to absences authorized under section 79.7. However, the employer is not required to pay remuneration for more than two days of absence when the employee is absent from work under those two sections during the same year.”

28. Section 80 of the Act is amended

(1) by replacing “one day” by “two days”;

(2) by replacing “four” by “three”.

29. Section 81.1 of the Act is amended by striking out “if the employee is credited with 60 days of uninterrupted service” in the first paragraph.

30. Section 81.18 of the Act is amended by adding the following sentence at the end of the first paragraph: “For greater certainty, psychological harassment includes such behaviour in the form of such verbal comments, actions or gestures of a sexual nature.”

31. Section 81.19 of the Act is amended by adding the following sentence at the end of the second paragraph: “They must, in particular, adopt a psychological harassment prevention and complaint processing policy and make it available to their employees.”

32. Section 87.1 of the Act is amended by adding the following paragraph at the end:

“Any distinction made solely on the basis of a hiring date, in relation to pension plans or other employee benefits, that affects employees performing the same tasks in the same establishment is also prohibited.”

33. The Act is amended by inserting the following division before Division IX:

“DIVISION VIII.2

“PERSONNEL PLACEMENT AND TEMPORARY FOREIGN WORKERS

“§1. — *Placement agencies and recruitment agencies*

“92.5. No one may operate a personnel placement agency or a recruitment agency for temporary foreign workers unless they hold a licence issued by the Commission, in accordance with a regulation of the Government.

“92.6. No client enterprise may knowingly retain the services of a personnel placement agency or a recruitment agency for temporary foreign workers that does not hold a licence issued by the Commission, in accordance with a regulation of the Government.

“92.7. The Government may, by regulation,

(1) define, for the purposes of this Act, what constitutes a personnel placement agency, a recruitment agency for temporary foreign workers, a client enterprise and a temporary foreign worker;

(2) establish classes of licences;

(3) determine the period of validity of a licence and specify any condition, restriction or prohibition relating to the issue and renewal of a licence and to the activities it authorizes;

(4) prescribe the administrative measures that apply if the specified conditions, restrictions and prohibitions are not complied with; and

(5) prescribe the obligations of a client enterprise that retains the services of an agency.

“92.8. A person who believes he has been wronged by a decision rendered under the regulation provided for in section 92.7 may, within 30 days of notification of the decision, contest it in writing before the Administrative Labour Tribunal.

“§2. — *Obligations of temporary foreign worker’s employer*

“92.9. An employer who hires a temporary foreign worker must, without delay, inform the Commission of the worker’s date of arrival, of the term of his contract and, if his departure date does not coincide with the end of the contract, of his departure date and the reasons for his departure.

The employer must in addition record that information in the registration system or register kept by the employer in accordance with the regulation made under section 29.

“92.10. If, following an inquiry, the Commission has grounds to believe that one of the rights of a temporary foreign worker under this Act or a regulation has been violated, the Commission may, even if no complaint is filed and if no settlement is reached, exercise any recourse on behalf of the worker.

“92.11. No employer may require a temporary foreign worker to entrust custody of personal documents or property to the employer.

“92.12. No employer may charge a temporary foreign worker fees related to his recruitment, other than fees authorized under a Canadian government program.”

34. Section 95 of the Act is amended

(1) by replacing “responsible jointly and severally” by “solidarily liable”;

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

“A personnel placement agency and a client enterprise that, within the framework of a contract with the agency, uses an employee’s services are solidarily liable for the pecuniary obligations fixed by this Act or the regulations.”

35. The Act is amended by inserting the following division after section 121:

“DIVISION I.1

“RECOURSE AGAINST CERTAIN DIFFERENCES IN TREATMENT

“121.1. An employee who believes he has been the victim of a distinction referred to in the third paragraph of section 87.1 may file a complaint in writing with the Commission. Such a complaint must be filed within 90 days of the distinction becoming known to the employee. It may also be filed, on behalf of an employee who consents to it in writing, by a non-profit organization dedicated to the defence of employees’ rights.

If the complaint is filed within that time with the Administrative Labour Tribunal, failure to file the complaint with the Commission cannot be invoked against the complainant.

“121.2. If an employee is subject to a collective agreement or a decree, the complainant must then prove to the Commission that he has not exercised his recourses arising out of that agreement or decree, or that, having exercised them, he discontinued proceedings before a final decision was rendered.

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

Sections 103 to 110 and 123.3 apply to the inquiry, with the necessary modifications.

“121.4. If the Commission refuses to take action following a complaint, the employee or, if applicable, the organization, with the employee’s written consent, may, within 30 days of the Commission’s decision under section 107 or 107.1, make a written request to the Commission for the referral of the complaint to the Administrative Labour Tribunal.

“121.5. At the end of the inquiry, if no settlement is reached between the parties and the Commission agrees to pursue the complaint, it shall refer the complaint without delay to the Administrative Labour Tribunal.

“121.6. The Commission may represent an employee in a proceeding under this division before the Administrative Labour Tribunal.

“121.7. The provisions of the Act to establish the Administrative Labour Tribunal (chapter T-15.1) that pertain to the Administrative Labour Tribunal, its members, their decisions and the exercise of their jurisdiction and section 100.12 of the Labour Code (chapter C-27) apply, with the necessary modifications.

“121.8. If the Administrative Labour Tribunal considers that the employee has been the victim of a prohibited distinction, it may render any decision it believes fair and reasonable, taking into account all the circumstances of the matter, including

- (1) order that the distinction no longer be made;
- (2) order that an employee be made a member of a pension plan, or make other employee benefits applicable to the employee; and
- (3) order the employer to pay the employee an indemnity for the loss resulting from the distinction.”

36. Section 122 of the Act is amended by replacing “of the employee’s spouse, father, mother, brother, sister or one of the employee’s grandparents” in subparagraph 6 of the first paragraph by “of a relative within the meaning of section 79.6.1 or a person for whom the employee acts as a caregiver”.

37. Section 123.6 of the Act is amended by adding the following paragraph at the end:

“Where the complaint concerns behaviour of a sexual nature, the Commission shall notify the Commission des droits de la personne et des droits de la jeunesse without delay.”

38. Section 123.8 of the Act is amended by inserting “and 123.3” after “103 to 110” in the second paragraph.

39. Section 123.10 of the Act is amended by adding the following paragraph at the end:

“The third paragraph of section 123.3 applies to the mediation provided for in the first paragraph.”

40. Section 140 of the Act is amended by replacing “Every employer” in the introductory clause by “Every person”.

41. The Act is amended by inserting the following section after section 140:

“140.1. Every person who contravenes section 92.5 or 92.6 is guilty of an offence and is liable to a fine of \$600 to \$6,000 and, for any subsequent conviction, to a fine of \$1,200 to \$12,000.”

42. Section 141 of the Act is amended by replacing “139 and 140” by “139 to 140.1”.

43. Section 142 of the Act is replaced by the following section:

“142. If a legal person or a representative, mandatary or employee of a legal person, partnership or association without legal personality commits an offence under this Act or its regulations, the directors or officers of the legal person, partnership or association without legal personality are presumed to have committed the offence unless it is established that they exercised due diligence, taking all necessary precautions to prevent the offence.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the affairs of the partnership.”

AMENDING PROVISIONS

ACT RESPECTING LABOUR RELATIONS, VOCATIONAL TRAINING AND WORKFORCE MANAGEMENT IN THE CONSTRUCTION INDUSTRY

44. Section 62 of the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20) is amended by inserting “according to sections 81.18 to 81.20 of the Act respecting labour standards (chapter N-1.1),” after “harassment,” in the first paragraph.

ACT TO ESTABLISH THE ADMINISTRATIVE LABOUR TRIBUNAL

45. Schedule I to the Act to establish the Administrative Labour Tribunal (chapter T-15.1) is amended by inserting “92.8, 121.5,” after “86.1,” in paragraph 16.

TRANSITIONAL AND FINAL PROVISIONS

46. The third paragraph of section 87.1 of the Act respecting labour standards (chapter N-1.1), as enacted by section 32 of this Act, does not apply to a distinction made solely on the basis of a hiring date and existing on *(insert the date that precedes the date of coming into force of section 32 of this Act)*.

47. This Act comes into force on *(insert the date of assent to this Act)*, except

(1) sections 4, 7, 9, 11, 12 and 16, subparagraph *a* of paragraph 1 and paragraph 2 of section 18, sections 27 to 29 and subparagraph *b* of paragraph 2 of section 31, which come into force on 1 January 2019; and

(2) section 2, except as concerns the reference to Division I.1 of Chapter V of the Act respecting labour standards, sections 5 and 33, insofar as it concerns sections 92.5, 92.6 and 92.8 to 92.12 of the Act respecting labour standards, and sections 34, 41, 42 and 45, insofar as it concerns the reference to section 92.8 of that Act, which come into force on the date of coming into force of the first regulation made under section 92.7 of the Act respecting labour standards.

