



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 51

**An Act mainly to improve the
flexibility of the parental insurance
plan in order to promote family-work
balance**

Introduction

**Introduced by
Mr. Jean Boulet
Minister of Labour, Employment and Social Solidarity**

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EXPLANATORY NOTES

This bill proposes to amend the Act respecting parental insurance mainly to offer greater flexibility in using parental insurance plan benefits.

More specifically, the period during which maternity, paternity, parental or adoption benefits may be paid is extended. The work-income-related exemptions to which a recipient is entitled during a week of benefits are also increased.

The Conseil de gestion de l'assurance parentale is empowered to grant additional weeks of parental or adoption benefits when the parents share a certain number of weeks of benefits.

Moreover, the number of weeks of benefits for the birth or adoption of more than one child is increased.

Weeks of exclusive adoption benefits are granted to each adoptive parent and additional weeks of exclusive adoption benefits are granted in the case of adoptions outside Québec requiring a stay outside Québec.

In the event of a child's death, the parents are granted an additional period before benefits end.

Pilot projects may be implemented to study or test new measures relating to the conditions governing the application of the parental insurance plan.

Other amendments are made to the Act respecting parental insurance, in particular so that exceptions to the method for calculating benefits may be prescribed by regulation as regards establishing an employee's average weekly earnings.

Lastly, consequential amendments are made to other Acts, including the Act respecting labour standards, and amendments are made to the Regulation under the Act respecting parental insurance. Transitional provisions are also included.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting parental insurance (chapter A-29.011);
- Act respecting administrative justice (chapter J-3);
- Act respecting labour standards (chapter N-1.1).

REGULATION AMENDED BY THIS BILL:

- Regulation under the Act respecting parental insurance (chapter A-29.011, r. 2).

Bill 51

AN ACT MAINLY TO IMPROVE THE FLEXIBILITY OF THE PARENTAL INSURANCE PLAN IN ORDER TO PROMOTE FAMILY-WORK BALANCE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING PARENTAL INSURANCE

1. Section 2 of the Act respecting parental insurance (chapter A-29.011) is amended

(1) by inserting “in connection with a pregnancy or the delivery of a child” after “benefits” in paragraph 1;

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

“(2) paternity benefits and exclusive or shareable parental benefits in connection with the birth of a child; and”;

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

“(3) exclusive and shareable adoption benefits.”

2. Section 3 of the Act is amended by striking out “gagné” in subparagraph 3 of the first paragraph in the French text.

3. Section 7 of the Act is amended by replacing the second and third paragraphs by the following paragraphs:

“Payment of maternity benefits shall begin not earlier than the 16th week preceding the expected week of delivery and end not later than 20 weeks after the week of delivery. However, payment may end after the expiry of the 20 weeks, but may not exceed the 52nd week after the week of delivery, if the child is hospitalized and if, on request, the maternity benefit period is extended for the duration of the child’s hospitalization.

Payment of maternity benefits may also end after the expiry of the 20-week period, but may not exceed the 52nd week after the week of delivery if, in the cases and for the time determined by regulation of the Conseil de gestion, the maternity benefit period is extended.”

4. Section 8 of the Act is amended

(1) by replacing “18” in the first paragraph by “20”;

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

“However, payment may end after the expiry of the 20-week period, but may not exceed the 52nd week after the week in which the termination of pregnancy occurs if, in the cases and for the time determined by regulation of the Conseil de gestion, the maternity benefit period is extended.”

5. Section 10 of the Act is replaced by the following sections:

“10. The number of weeks of shareable parental benefits to which the parents may be entitled is 32 or, in the case of an election pursuant to section 18, 25. Payment may begin the week of the birth of the child at the earliest, but may not exceed the benefit period.

“10.1. For the birth of more than one child as a result of a single pregnancy, five weeks of exclusive parental benefits shall be granted to each parent or, in the case of an election pursuant to section 18, three weeks.

“10.2. The Conseil de gestion may, by regulation, increase the number of weeks of shareable parental benefits in order to encourage the sharing of those weeks of benefits between the parents, in the cases and according to the terms and conditions it determines for those additional weeks. It shall also set the benefit rate for those weeks.”

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

“11. The number of weeks of adoption benefits to which adoptive parents may be entitled is

(1) 5 weeks of exclusive benefits for each adoptive parent or, in the case of an election pursuant to section 18, 3 weeks; and

(2) 32 weeks of shareable benefits or, in the case of an election pursuant to section 18, 25 weeks.

Payment may begin, at the earliest, the week of the child’s arrival into the care of one of the parents for the purpose of the adoption. It may not exceed the benefit period.

In the case of an adoption outside Québec, the benefit period may begin before the child’s arrival, in the cases and according to the terms and conditions prescribed by regulation of the Conseil de gestion.

If the adoption outside Québec does not materialize, the adoption benefits paid during the weeks preceding the child’s expected arrival are not recoverable, up to the number of weeks fixed under section 11.3.

“11.1. For the adoption of more than one child at the same time, the number of weeks of exclusive benefits for each adoptive parent shall be increased by five weeks or, in the case of an election pursuant to section 18, three weeks.

“11.2. The Conseil de gestion may, by regulation, increase the number of weeks of shareable adoption benefits in order to encourage the sharing of those weeks of benefits between the parents, in the cases and according to the terms and conditions it determines for those additional weeks. It shall also set the benefit rate for those weeks.

“11.3. In the case of an adoption outside Québec, the Conseil de gestion may, by regulation, increase the number of weeks of adoption benefits to which the adoptive parents may be entitled, subject to the terms and conditions it determines for those additional weeks. It shall also set the benefit rate for those weeks.”

7. Section 13 of the Act is amended

(1) by replacing “a claim for benefits” in the first paragraph by “an application”;

(2) by replacing “who files for benefits” in the second paragraph by “who files an application for benefits”.

8. Section 14 of the Act is amended

(1) by replacing “normally lives with the child” in the first paragraph by “ensures a regular presence to take care of the child”;

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

“If the parent no longer ensures a regular presence with the child, the child is deemed to be present with the parent until the end of the week in which the separation occurs or, if the child is deceased, until the end of the second week following the week of the child’s death.

However, when two or more weeks of maternity benefits are payable after the week of the child’s death, the presumption of presence provided for in the second paragraph does not apply to the mother. If only one week of maternity benefits remains payable after the week of the child’s death, the child shall be deemed to be present with the mother during the second week following the week of the child’s death.

In the case of the birth of more than one child as a result of a single pregnancy or in the case of the adoption of more than one child at the same time, entitlement to exclusive benefits under sections 10.1 and 11.1 ends as of the end of the week in which the parent ensures a regular presence with only one of those children. However, in the event of a child’s death, the child shall be deemed to be present with the parents until the end of the second week following the week of the child’s death.”

9. Section 15 of the Act is amended

(1) by replacing both occurrences of “delivery” in the first paragraph by “birth”;

(2) by replacing the portion before subparagraph 2 of the second paragraph by the following:

“In the case of a birth or an adoption occurring while at least one of the parents is eligible for shareable parental or adoption benefits for a previous event, the number of weeks of shareable parental or adoption benefits for that second event is equal to the lesser of the following:

(1) the total number of weeks of shareable parental or adoption benefits granted for that second event; or”.

10. Section 16 of the Act is amended

(1) in the first paragraph,

(a) by replacing “The total number of weeks of parental or adoption benefits may be allocated to one parent, divided between the parents” by “The weeks of shareable parental or adoption benefits may be taken by either parent or shared between the parents;”;

(b) by replacing “or allocated concurrently to the parents” by “they may also be taken concurrently by the parents”;

(2) by replacing “divided” in the second paragraph by “shared”.

11. Section 17 of the Act is amended

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

“In the event of the death of a parent, whether the latter is eligible or not under this plan, the weeks of maternity or paternity benefits and the weeks of exclusive parental or adoption benefits that have not been paid as at the date of his or her death shall be added to the number of weeks of shareable parental or adoption benefits of the surviving parent.”;

(2) by inserting “shareable” before “parental” in the second paragraph;

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

“The same applies to the calculation of the shareable adoption benefits payable from the death of one of the adoptive parents.”

12. Section 17.1 of the Act is amended by replacing the second paragraph by the following paragraph:

“The Conseil de gestion may, by regulation, determine the conditions governing how the parental insurance plan is to be applied when one of the parents is not resident in Québec at the time an application for benefits under that plan or a plan mentioned in the first paragraph is filed. It may, to that end, take into consideration the applicant’s place of residence at the beginning of the benefit period or at any other time according to the terms and conditions it determines.”

13. Section 18 of the Act is replaced by the following section:

“18. The amount of the weekly benefits shall be equal to the following percentage of the average weekly earnings, calculated in accordance with this division:

(1) 70% for the weeks of maternity and paternity benefits, the first seven weeks of shareable parental benefits provided for in section 10 and the weeks of exclusive parental benefits for each parent provided for in section 10.1;

(2) 70% for the weeks of exclusive adoption benefits for each parent, the first seven weeks of shareable adoption benefits provided for in section 11 and the weeks of exclusive adoption benefits provided for in section 11.1; and

(3) 55% for the other weeks of shareable parental or adoption benefits provided for in sections 10 and 11.

Despite the first paragraph, a person may, subject to the terms and conditions prescribed by regulation of the Conseil de gestion, elect to receive weekly benefits equal to 75% of the person’s average weekly earnings for a lesser number of weeks of benefits.

The election made by the parent whose application for benefits is received first in respect of a birth or adoption shall apply to the other parent’s application. Except in exceptional circumstances, an election is irrevocable.”

14. Section 19 of the Act is amended

(1) by replacing “family income of the recipient” in the first sentence by “income”;

(2) by replacing “a recipient’s family income and a” in the last sentence by “the income taken into consideration and its”.

15. Section 21 of the Act is amended by inserting “, subject to exceptions prescribed by regulation of the Conseil de gestion,” after “the average of the insurable earnings is established” in the second paragraph.

16. Section 23 of the Act is amended by replacing “fifty-second” in the second paragraph by “78th”.

17. Section 24 of the Act is amended

(1) in paragraph 2,

(a) by replacing “third” and “that it was impossible to act” by “sixth” and “that a valid reason prevented him or her from acting”, respectively;

(b) by replacing “a claim” and “claimant” by “an application” and “applicant”, respectively;

(2) by replacing “sections 7 to 11” in paragraph 3 by “sections 7, 8, 9, 10 and 11”;

(3) by replacing “claimant” in paragraph 4 by “applicant”.

18. Section 26 of the Act is amended by adding the following paragraph at the end:

“The Conseil de gestion may, by regulation, determine the terms and conditions according to which the benefits paid may be assigned to another period as well as the moment from which they are presumed paid.”

19. Section 37 of the Act is amended by replacing “a claim” by “an application”.

20. Section 88 of the Act is amended, in the first paragraph,

(1) by inserting “, in particular,” after “to take account” in subparagraph 3;

(2) by replacing “a claim is made” in subparagraph 4 by “an application is filed”.

21. The Act is amended by inserting the following sections after section 88 and before the heading of Chapter V.1:

“88.0.1. The Conseil de gestion may, by regulation, implement a pilot project to study or test new measures.

To that end, it may amend certain conditions governing the application of the plan for classes of workers, namely employees, self-employed workers or intermediate or family-type resources, in order to do such things as

(1) establish different qualifying or benefit periods;

(2) calculate average weekly earnings differently; or

(3) establish different election schemes.

The regulation of the Conseil de gestion may prescribe the terms and conditions according to which and the extent to which this Act and the regulations apply to a pilot project, excluding eligibility requirements. The regulation may also prescribe any other measure necessary for the pilot project's implementation.

“88.0.2. A pilot project shall be established for a three-year period.

The Conseil de gestion may, at any time, extend, modify or terminate it by regulation.

“88.0.3. In the year following the third year of the pilot project's implementation, the Conseil de gestion shall evaluate the pilot project and send its report and any recommendations to the Minister.

A regulation of the Conseil de gestion may prescribe any other time limit or any other evaluation frequency or procedure.”

22. Section 118 of the Act is amended by replacing both occurrences of “15” by “30”.

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

“121.1. Penal proceedings for an offence under section 121 shall be prescribed one year after the date on which the prosecutor became aware of the commission of the offence. However, proceedings may not be brought if more than five years have elapsed since the commission of the offence.”

OTHER AMENDING PROVISIONS

ACT RESPECTING ADMINISTRATIVE JUSTICE

24. Section 117 of the Act respecting administrative justice (chapter J-3) is amended, in the first paragraph,

(1) by inserting “Chapter IV of the Act respecting parental insurance (chapter A-29.011), subject to the exceptions contemplated in section 49 of the said Act, or respecting” after “a question is raised respecting”;

(2) by replacing “the Tribunal must, subject to the exceptions contemplated in section 76 of the said Act,” by “subject to the exceptions contemplated in section 76 of the said Act, the Tribunal must”.

ACT RESPECTING LABOUR STANDARDS

25. Section 81.2 of the Act respecting labour standards (chapter N-1.1) is amended by replacing “52” in the second paragraph by “78”.

- 26.** Section 81.5 of the Act is amended by replacing “18” by “20”.
- 27.** Section 81.5.2 of the Act is amended by replacing “beginning from the week of the event” at the end of the second paragraph by “that ends not later than 20 weeks after the week of the event”.
- 28.** Section 81.11 of the Act is amended by replacing both occurrences of “70” in the first paragraph by “78”.
- 29.** Section 81.14.1 of the Act is amended
- (1) by replacing “may be” by “shall be”;
 - (2) by adding the following paragraph at the end:

“At the request of the employee and provided the employer consents thereto, paternity or parental leave shall be divided into weeks.”

REGULATION UNDER THE ACT RESPECTING PARENTAL INSURANCE

30. The Regulation under the Act respecting parental insurance (chapter A-29.011, r. 2) is amended by inserting the following sections before section 15:

“14.1. The number of weeks of shareable parental or adoption benefits at a rate of 55% of the average weekly earnings is increased by 4 weeks if each of the parents received 10 weeks of shareable benefits.

Where an election has been made under section 18 of the Act, the number of weeks of shareable parental or adoption benefits at a rate of 75% of the average weekly earnings is increased by 3 weeks if each of the parents received 8 weeks of shareable benefits.

“14.2. If an adoption outside Québec requires a stay in a territory, another province or another country, the number of weeks of exclusive adoption benefits is increased for each parent by 5 weeks. The benefit rate for those weeks is 70% of the average weekly earnings or, where an election has been made under section 18 of the Act, 75% of the average weekly earnings.

“14.3. In the case of an adoption outside Québec, the benefit period may begin 5 weeks before the week of the child’s arrival into the care of one of the parents for the purpose of the adoption.”

31. Section 41 of the Regulation is amended by replacing the first paragraph by the following paragraph:

“In respect of a week of benefits, the sum of the weekly benefits payable and of the earnings to which the recipient is entitled, once allocated as set out in section 43.1, must not exceed the recipient’s average weekly earnings. If that sum exceeds the recipient’s average weekly earnings, the excess amount is deducted from the weekly benefits payable.”

TRANSITIONAL AND FINAL PROVISIONS

32. Sections 3 to 6, 13, 16, 25 to 28 and 30 apply only with regard to a birth occurring on or after 1 January 2021 and to the adoption of a child whose arrival into the care of one of the parents for the purpose of the adoption occurs on or after that date.

33. Section 24 does not apply to proceedings instituted before the Administrative Tribunal of Québec for which a first hearing was held before *(insert the date of assent to this Act)*.

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

