Labour standards in Québec

MAY 2016
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**If you are dissatisfied with the services obtained**
Definitions

In the Act respecting labour standards, the following terms have a precise meaning, which is useful to know.

Dismissal
A dismissal consists of terminating definitely the employment of an employee whose conduct has been called into question by the employer. In some cases, the non-renewal of a contract or the decision not to recall the employee to work may constitute a dismissal.

Domestic
An employee in the employ of a natural person and whose main function is the performance of domestic duties in the dwelling of that person, including an employee whose main function is to take care of or provide care to a child or to a sick, handicapped or aged person and to perform domestic duties in the dwelling that are not directly related to the immediate needs of the person in question.

Employee of the clothing industry
An employee of the clothing industry who would have been covered by any one of the following decrees, had it not been for their expiry:
1. the Decree on the men’s and boys’ clothing industry;
2. the Decree on the women’s clothing industry;
3. the Decree on the men’s clothing industry;
4. the Decree on the leather glove industry.
An employee who works in a clothing store is not part of this industry.

Indemnity
A sum of money paid to the employee, either to make up for a prejudice suffered or to compensate a leave or certain disadvantages.

Layoff
A layoff consists of temporarily interrupting the employment of an employee owing to a change in the enterprise’s labour needs.

Permanent layoff
A permanent layoff consists of terminating definitely the employment of an employee owing to an economic or technological change in the enterprise.

Prohibited practice
A prohibited practice may take the form of a dismissal that is occasionally constructive, a disciplinary layoff, involuntary retirement, a transfer, disciplinary measures or reprisals.

Reference year
A period of twelve consecutive months during which the employee progressively acquires entitlement to the vacation.

The Act respecting labour standards stipulates that the reference year extends from May 1 of the previous year to April 30 of the current year, except if an agreement or a decree sets another date to mark the starting point of this period.

Suspension
A suspension generally consists of temporarily interrupting the employment of an employee for a specified period. This is a disciplinary sanction. A suspension is always temporary and does not sever the contract of employment.

Uninterrupted service
The uninterrupted period during which the employee is bound to the employer by a contract of employment, even if the carrying out of the work was interrupted without there being a termination of the contract, and the period during which fixed-term contracts succeed one another without interruption which, under the circumstances, allows one to conclude a non-renewal of contract.
Labour standards

The minimum conditions of employment of all Québec employees are set by the Act respecting labour standards. This Act thus establishes the foundations of a universal system of labour standards. It deals notably with wages, leaves and absences, the notice of termination of employment and the recourses that may be exercised if an employee files a complaint.

The conditions of employment established between the employer and the employee must not be less than those stipulated by the labour standards, even if there is a collective agreement or a decree, subject to an exemption permitted by the Act.

Employees not covered by the Act

The Act respecting labour standards protects the majority of Québec employees, whether they work full time or part time. Some employees are, however, partially or totally excluded from these standards.

Employees who are partially excluded

1. An employee who takes care of or provides care to persons and who does his work:
   a. in the dwelling of the person cared for
   b. on an occasional basis or
   c. whose employment is based on assistance to family or community help
   d. and whose employer is not profit oriented

   If the person performs household chores, they must be linked solely to the needs of the person cared for;

2. A student who works during the school year in an establishment selected by an educational institution pursuant to a job induction program approved by the Ministère de l’Éducation et de l’Enseignement Supérieur;

   However, these two categories of employees benefit from standards related to psychological harassment and the right to remain at work after the normal retirement age.

3. Senior managerial personnel;

4. An employee governed by the Act respecting labour relations, vocational training and workforce management in the construction industry;

   However, these two categories of employees benefit from the right to absences owing to a criminal offence as well as the right to certain absences and certain leaves for family or parental reasons, standards related to psychological harassment and the right to remain at work after the normal retirement age.
Employees totally excluded

1. Employees of enterprises subject to the Canada Labour Code, for example banks, radio stations, interprovincial and international transportation enterprises.
2. The beneficiary of health services and social services, who works toward his physical, mental or social rehabilitation in a CLSC, a social services centre, a hospital centre, or a reception centre.

Differences in conditions of employment

An employer cannot give an employee subject to the Act respecting labour standards conditions of employment that are less advantageous than those of other employees who do the same work in the same establishment by reason simply of his date of hiring.

These conditions of employment deal with:
1. wages;
2. the duration of work;
3. statutory holidays;
4. vacation;
5. rest period;
6. absences and leaves for family or parental reasons;
7. absences owing to sickness, organ or tissue donations for transplants, an accident or a criminal offence;
8. the notice of termination of employment.

Work performed by children

An employer cannot:

1. ask a child to perform work that exceeds his capacities or that risks compromising his education or adversely affecting his health or physical or moral development;
2. have work performed by a child under 14 years of age without the written consent of a parent or tutor;
3. have work performed by a child who is required to attend school during school hours;
4. have work performed by a child at night, namely between 11 p.m. on a given day and 6 a.m. the following day, except if he is no longer required to attend school or if the work consists of delivering newspapers, creating or interpreting works in certain artistic production fields.

An employer who has work performed by a child must take into account the child’s place of residence and make sure that his hours of work allow him to be at home between 11 p.m. on a given day and 6 a.m. the following day. However, this is not obligatory if the child is no longer required to attend school.

The employer is also exempted from this provision when the child works:
• as a creator or a performer in certain artistic production fields;
• for a social or community organization, such as a vacation camp or a recreational organization, if the child’s conditions of employment require that he lodge at the employer’s establishment and if he is not required to attend school the following day.
1. During employment: wages, pay and work

Wages

The minimum wage is set by the Government of Québec. However, it is the Commission des normes, de l’équité, de la santé et de la sécurité du travail that supervises its application. The provisions concerning wages affect the majority of Québec employees, whether they work full time or part time.

Exclusions

Some employees are, however, excluded from the application of the minimum wage standard. They are:

1. a student employed in a social or community non-profit organization, such as a recreational organization or a vacation camp;
2. a trainee within the context of vocational training recognized by an Act;
3. an employee entirely remunerated on commission that works in an activity of a commercial nature outside the establishment and whose working hours cannot be controlled.

Part-time employees and their wages

An employer cannot pay a part-time employee a wage that is less than that of other employees who perform the same work in the same establishment, for the sole reason that the employee works fewer hours each week.

This provision does not apply if the employee earns more than twice the minimum wage.

Minimum wage rates as of May 1, 2016

<table>
<thead>
<tr>
<th>General rate</th>
<th>Rate for employees receiving tips</th>
<th>Rate for employees of the clothing industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10.75 per hour</td>
<td>$9.20 per hour</td>
<td>$10.75 per hour</td>
</tr>
</tbody>
</table>

1 Employees who work in clothing stores are not part of the clothing industry.

The minimum wage rates are subject to change. To check their validity, contact the CNESST by phone at 1-844-838-0808.

If the employee receives from his employer benefits having a pecuniary value, such as the use of an automobile or lodging, this must not result in his wage being less than the minimum wage.

Deductions

An employer is entitled to make deductions from wages only if he is required to do so by an Act, a regulation, a court order, a collective agreement, a decree or a mandatory supplemental pension plan. Any other deduction from the wages must be accepted by the employee in writing. The specific purpose of this deduction must be mentioned in the written authorization. The employee can cancel this authorization at any time.

The voluntary retirement savings plan

The Act respecting voluntary retirement savings plans stipulates that in certain cases the employer must establish a voluntary retirement savings plan (VRSP) in the business and automatically register in the VRSP the employees concerned. Each of the employees concerned has the choice of remaining or not remaining registered in the VRSP.

To find out more about the procedures respecting the application of the plan, please contact the Retraite Québec toll-free at 1-877-660-8282 or in Québec City region at 418-643-8282. You can also visit the Retraite Québec website (retraitequebec.gouv.qc.ca).

Lastly, the CNESST ensures compliance with the employers’ obligation to establish a VRSP and offer it to their employees. It also receives complaints from employees who believe that they are victims of prohibited practices.

Special clothing

An employee cannot receive less than the minimum wage rate because the cost of purchasing, using or maintaining special clothing for his work has been deducted from his wages. When an employer requires that his employees wear special clothing, he must provide it free of charge to employees who are paid the minimum wage.

An employer must provide all employees with the special clothing that identifies them as employees of his establishment, for example a jacket with a logo. He cannot require that they purchase clothing or accessories that are items in his trade.

In the case of an employee receiving tips, his wage must be increased by the reported tips for the calculation of the minimum wage established by this standard.
The use of material, equipment or merchandise
An employer who requires that his employee use material, equipment, raw materials or merchandise for the performance of a contract must provide them free of charge if the employee is paid the minimum wage. An employer may not require that an employee pay for the purchase, use or upkeep of these articles if this brings his wage to less than the minimum wage rate.

Meals and accommodation
An employee’s working conditions may require the employer to provide meals and accommodation or ensure that accommodation is provided to the employee. In this case, the maximum amount the employee may be required to pay is:

<table>
<thead>
<tr>
<th>Type of meal</th>
<th>As of May 1, 2016¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakfast, lunch or dinner</td>
<td>$2.12 per meal</td>
</tr>
<tr>
<td></td>
<td>Maximum of $27.61 per week</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Type of accommodation</th>
<th>As of May 1, 2016¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Room</td>
<td>$26.55 per week</td>
</tr>
<tr>
<td>Dwelling where the room accommodates 4 or fewer employees</td>
<td>$47.77 per week</td>
</tr>
<tr>
<td>Dwelling where the room accommodates 5 or more employees</td>
<td>$31.86 per week</td>
</tr>
</tbody>
</table>

¹ The amounts indicated are subject to change each year. To check their validity, contact the CNESST by telephone or consult its Web site.

Each employee must have a bed and a chest of drawers, and access to a toilet and a shower or bath.

Each employee housed in a dwelling must also have access to a washer and dryer, as well as to a kitchen equipped with a refrigerator, a stove and a microwave oven.

The employee cannot be required to pay any other costs related to the accommodation, such as the cost of having access to a kitchen, a living room or any other room.

Pay

Payment of wages
An employer has one month to remit to the employee his first pay. Afterwards, wages must be paid at regular intervals that cannot exceed 16 days, or one month in the case of senior managerial personnel. If pay day falls on a statutory holiday, the wages must be paid on the previous working day.

The sums exceeding the usual wages, such as bonuses or overtime earned during the week that precedes the payment of the wages, may be paid at the time of the following pay.

Pay sheet
At 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:
1. the employer’s name;
2. the employee’s name;
3. the job title;
4. the work period that corresponds to the payment;
5. the date of payment;
6. the number of hours paid at the regular rate;
7. the number of overtime hours paid or replaced with a leave, with the applicable rate;
8. the nature and the amount of the bonuses, indemnities, allowances or commissions paid;
9. the wage rate;
10. the amount of the gross wages;
11. the nature and amount of the deductions made;
12. the amount of the net wages that the employee receives;
13. the amount of the tips that the employee reported or that the employer attributed to him.
Work schedule

Hours of work and presence at work
An employee is deemed to be present at work and must be paid:
1. when he is at his employer’s disposal on the work premises and is required to wait in order to be assigned work;
2. during breaks granted by the employer;
3. during the time of a trip required by the employer;
4. during any trial or training period required by the employer.

The employer must reimburse the reasonable expenses paid by the employee when required travel or take training at the employer’s request.

Coffee break
The coffee break is not obligatory, but when it is granted by the employer it must be paid and be included in the calculation of the hours worked.

Meals
After a work period of five consecutive hours, the employee is entitled to a 30-minute period, without pay, for his meal. This period must be with pay if he is not authorized to leave his work station.

Weekly rest period
Each week, the 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.

Indemnity for reporting to work of at least three hours
An employee who reports to work at the express request of his employer or in the normal course of his employment and who ultimately does not work or who works less than three consecutive hours is entitled to three hours of pay at his usual wage.

The employee is entitled to the tips received during this period. If the provisions concerning overtime ensure him a higher amount, he does not benefit from the indemnity for reporting to work of three hours, but rather from the number of overtime hours with a 50% premium.

However, this provision does not apply in the case of superior force, such as when there is a fire, or when the employee is hired for less than three hours, such as the case for certain ushers, school bus drivers and crossing guards.

Right to refuse to work
An employee may refuse to work if, on a given day:
• he is asked to work more than 4 hours beyond normal working hours or more than 14 hours per 24-hour period, whichever period is shorter;
• if he is asked to work more than 12 hours per 24-hour period. This provision applies solely to employees whose daily working hours are variable or non-continuous.

An employee may also refuse to work if, in a given week:
• 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 applies solely to employees who work in an isolated area or on the James Bay territory.

However, an employee cannot refuse to work:
1. if such a refusal would endanger the life, health or safety of workers or the public;
2. in the case of the risk of destruction or serious deterioration of movable or immovable property, or in another case of superior force;
3. if such a refusal violates the code of ethics.
Overtime

Duration of the regular workweek

The regular workweek is usually 40 hours. Its duration is used to determine from what point an employee begins to work overtime.

However, for some employees the regular workweek is as follows:

| Employees of the clothing industry | 39 hours |
| Watchmen who guard a property on behalf of an enterprise supplying a surveillance service | 44 hours |
| Employees who work in a forestry operation or a sawmill | 47 hours |
| Employees who work in an isolated area or on the James Bay territory | 55 hours |
| Watchmen who do not work an enterprise supplying a surveillance service | 60 hours |

The regular workweek is not a limit of time beyond which an employee may refuse to work.

Calculation of overtime

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

The employer may, at the employee’s request, replace the payment of overtime with a leave of a duration of the overtime hours worked, increased by 50% (7 hours = 10½ hours).

Vacations and statutory holidays are considered days worked for the calculation of overtime.

Exceptions

The standard concerning the premium rate does not apply:

1. to a student employed in a vacation camp or in a social or community non-profit organization, such as a recreational organization;
2. to the managerial personnel of an enterprise;
3. to an employee who works outside the establishment and whose hours of work cannot be controlled;
4. to an employee assigned to canning, packaging and freezing fruits and vegetables during the harvesting period;
5. to an employee in a fish, fish processing or fish canning establishment;
6. to a farm worker;
7. to an employee whose sole duty is to care for or to provide care to a child, a sick, handicapped or elderly person in this person’s home including, where applicable, performing household tasks directly related to this person’s immediate needs, except if the employer does this work for profit.

Staggering of working hours

If the CNESST authorizes the employer to do so, he can stagger working hours over several weeks. The Commission’s authorization is not necessary when the staggering of working hours is stipulated in a collective agreement or a decree.
**Employee receiving tips**

An employee receiving tips usually receives tips and works:
1. in a restaurant, except for fast food restaurants;
2. in an enterprise that sells, delivers or serves meals to be consumed outside the establishment;
3. on premises where alcoholic beverages are sold for on-site consumption;
4. in an establishment that offers in return for remuneration accommodations to tourists, including a camping establishment.

**Tips**

Tips comprise sums voluntarily remitted by the customers of an employee or the service charges added to their bill. They do not include the administrative expenses added to this bill. Tips belong in full to the employee who provided the service, regardless of whether they were paid directly or not. Tips must not be confused with wages.

An employer who collects tips must give them directly to the employee who provided the service. Tips include the service charges added to the customer’s bill, but not the administrative expenses added thereto.

An employer must always pay the employee, in addition to tips, at least the minimum wage.

**Tip-sharing arrangement**

An employee receiving tips is entitled to participate in a tip-sharing arrangement. This arrangement, which may be verbal or written, must result from the free and voluntary consent of the employees who are entitled to tips. An employer cannot impose this arrangement on employees or intervene in this respect in his establishment.

Employees who participate in a tip-sharing arrangement may ask the employer to manage the application of the arrangement and to share the tips between all participants. An employee hired in an establishment where there is already a tip-sharing arrangement is required to adhere to this arrangement.

The CNESST cannot claim sums for an employee who has opted out of a tip-sharing arrangement. Nor is it authorized to institute proceedings against an employee who does not fulfill his obligations with respect to his colleagues to whom he is bound by a tip-sharing arrangement.

**Expenses associated with the use of a credit card**

An employer cannot require that an employee receiving tips pay the expenses associated with the use of a credit card.

**Reporting of tips**

When calculating the indemnities for reporting to work, a statutory holiday, the National Holiday, vacations, a death, a marriage, or a notice of termination of employment, the employer must take into account the wages increased by tips that the employee reported or that the employer attributed to him.

The Act respecting labour standards requires that an employer accept the report of tips made by the employee and protects the employee against the reprisals that an employer could take against him following the exercise of his rights.
Statutory holidays
The majority of employees in Quebec are entitled to a leave and an indemnity for each of the following statutory holidays:

• January 1st (New Year’s Day);
• Good Friday or Easter Monday, at the employer’s option;
• the Monday before May 25th (National Patriots’ Day);
• July 1st. If this date falls on a Sunday: July 2nd (Canada Day);
• the 1st Monday of September (Labour Day);
• the 2nd Monday of October (Thanksgiving);
• December 25th (Christmas Day).

Employees of the clothing industry are also entitled to the following leaves: January 2nd, Good Friday and Easter Monday. Employees who work in clothing stores are not part of this industry.

An employee who is required to work on one of these statutory holidays is entitled, in addition to his wages for the day worked, to an indemnity or a paid compensatory leave, at the employer’s option. This leave must be taken in the three weeks preceding or following the statutory holiday.

An employee who is on vacation at the time of one of these statutory holidays is entitled to an indemnity or a paid compensatory leave, on the date agreed upon between him and the employer.

Exceptions
The statutory holiday standard does not apply:

• to an employee who was absent from work without authorization or without valid reason on the working day that precedes or follows the holiday. In this case, the employee will not receive the indemnity for this holiday and will not have a compensatory leave. The employee normally works on this working day;
• to an employee referred to in a collective agreement or in a decree that gives him at least seven statutory holidays plus the National Holiday leave;
• to a non-unionized employee who receives a number of statutory holidays, in addition to the National Holiday, equal to that stipulated in the collective agreement or the decree of the unionized employees of the enterprise for which he works.

Indemnity and compensatory leave
The indemnity for statutory holidays as well as for the National Holiday is calculated in the following way:

• first, it is necessary to determine the weeks that are used in the calculation and to establish the weekly wages of each of these weeks;
• next, these weekly wages must be added together;
• finally, the indemnity is calculated by using the following formula:

\[ \frac{1}{20} \text{ of the wages earned during the four complete weeks of pay preceding the week of the leave, excluding overtime.} \]

In the case of an employee receiving tips, the amount of the reported or attributed tips must be taken into account in the calculation of the indemnity.

In addition, in the case of an employee paid in whole or in part on commission, the indemnity is calculated using the following formula:

\[ \frac{1}{60} \text{ of the wages earned during the twelve complete weeks of pay preceding the week of the leave, excluding overtime.} \]

On-line calculation tools
To help you determine the amounts to which an employee is entitled, the CNESST provides you with a tool called monCalcul, available on the CNESST website

<https://cnesst.gouv.qc.ca/normes>
Example of a calculation of the indemnity for the statutory holiday of the Monday that precedes May 25th, namely National Patriots’ Day — employee paid every two weeks

Nathalie earns $10.75 per hour. She always works 20 hours per week by reason of 5 hours per day, from Tuesday to Friday. The employer’s pay period runs from Saturday to Friday. Pays are issued on Friday, every two weeks. Nathalie received her pay on April 25th and May 9th. What will be the amount of her pay of May 23rd, which must include the statutory holiday indemnity?

When the employee is paid every two weeks and the pay period overlaps the week of the statutory holiday, the pay periods must be divided by week for the calculation of the indemnity.

1. Determine the four complete weeks of pay preceding the week of the holiday.
   The period to be considered for the calculation of the indemnity is from Saturday, April 19th, to Friday, May 16th.

2. Calculate the number of hours worked during these four weeks
   20 hr x 4 weeks = 80 hr.

3. Calculate the wages earned during this period.

   | Number of hours worked during this period | 80 hr |
   | X hourly wage | X $10.75 |
   | = | = $860 |
   | x 1/20 of the wages earned during this period | X 1/20 |
   | = Statutory holiday indemnity | = $43 |

For her May 23rd pay, Nathalie will have to receive $473 which represents her regular wages for the two weeks worked ($215 X 2 = $430) to which the $43 statutory holiday indemnity has been added.

This example of a calculation is provided for information purposes only. For further information, contact the CNESST by telephone at 1-844-838-0808 or visit its website, click on the “Labour Standards” link and consult the “Statutory Holidays” standard under the “Leaves and Absences” heading. Also refer to the Act respecting labour standards.

National Holiday

National Holiday leave

June 24th is a statutory holiday for all Québec employees. The only condition to benefit by this leave is to be employed on the date of the statutory holiday.

If June 24th falls on a Sunday,
- this same day is a statutory holiday for an employee who usually works on Sunday;
- June 25th becomes the statutory holiday for an employee who does not usually work on Sunday.

If the employee is absent from work without valid reason when required to work on June 24th, he will not be able to take advantage of the benefits provided under the Act.

Indemnity

The National Holiday indemnity is calculated in the same way as the indemnity of the other statutory holidays.

The employee is working

An employee who must work on June 24th owing to the nature of the activities of the enterprise that employs him is entitled to normal wages for the day as well as the indemnity. However, the employer may choose to grant him, instead of the indemnity, a paid leave on the working day preceding or following June 24th.

The employee is on vacation

If June 24th falls during the employee’s vacation, the employer must grant him a compensatory leave at a date agreed upon between them, or pay him the compensatory indemnity.

The employee is on leave (non-working day)

If June 24th falls on a day when the employee does not usually work, the employer must grant a compensatory leave on the working day that precedes or follows June 24th, or pay the compensatory indemnity.
Vacation

Entitlement to the vacation is acquired over a period of 12 consecutive months. Known as the reference year, this period extends from May 1st until April 30th, except if the employer, a decree or an agreement sets other dates.

The length of the vacation is established according to the employee’s period of uninterrupted service. As for the amount of the indemnity, it varies according to the wages earned during the reference year in effect in the enterprise.

<table>
<thead>
<tr>
<th>Uninterrupted service at the end of the reference period</th>
<th>Length of the leave</th>
<th>Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than one year</td>
<td>1 day per full month of uninterrupted service, without exceeding 2 weeks</td>
<td>4%</td>
</tr>
<tr>
<td>1 year to less than 5 years</td>
<td>2 continuous weeks</td>
<td>4%</td>
</tr>
<tr>
<td>5 years and over</td>
<td>3 continuous weeks</td>
<td>6%</td>
</tr>
</tbody>
</table>

For employees of the clothing industry, the length of the vacation and the amount of the indemnity vary as follows:

<table>
<thead>
<tr>
<th>Uninterrupted service at the end of the reference period</th>
<th>Length of the leave</th>
<th>Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than one year</td>
<td>1 day per full month of uninterrupted service, without exceeding 2 weeks</td>
<td>4%</td>
</tr>
<tr>
<td>1 year to less than 3 years</td>
<td>3 weeks, including 2 continuous week</td>
<td>6%</td>
</tr>
<tr>
<td>3 years and over</td>
<td>4 weeks, including 3 continuous weeks</td>
<td>8%</td>
</tr>
</tbody>
</table>

Example of a calculation of the vacation indemnity

Mary has three years of uninterrupted service and earned $25,600 at the end of the reference year. Paul is credited with eight years of uninterrupted service and earned $30,000 in gross wages. What annual leave indemnity are they entitled to?

When the employee was not absent during the reference year by reason of sickness, maternity leave or accident, he is entitled to an indemnity of 4% or 6% depending on the uninterrupted service that the person has accumulated.

**Calculation method**

<table>
<thead>
<tr>
<th>Formula</th>
<th>Mary’s indemnity</th>
<th>Paul’s indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross annual wages</td>
<td>$25,600</td>
<td>$30,000</td>
</tr>
<tr>
<td>X 4% or 6% depending on the uninterrupted service</td>
<td>X 4%</td>
<td>X 6%</td>
</tr>
<tr>
<td>Annual leave indemnity</td>
<td>$1,024</td>
<td>$1,800</td>
</tr>
</tbody>
</table>

Mary will receive $1,024 indemnity for her two weeks of annual leave, and Paul will receive $1,800 for his three weeks of annual leave.

This example of a calculation is provided for information purposes only. For further information, contact the CNESST by telephone at 1-844-838-0808 or visit its website, click on the “Labour Standards” link and consult the “Vacation” standard under the “Leaves and Absences” heading. Also refer to the Act respecting labour standards.

Exceptions

Some employees subject to the Act respecting labour standards are excluded from the provisions dealing with the vacation. They include:

1. a student employed in a vacation camp or in a social or community non-profit organization, such as a recreational organization;
2. a real estate agent within the meaning of the Real Estate Brokerage Act (Chapter C-73.1), paid entirely on commission;
3. the representative of a securities broker or a securities adviser referred to in the Securities Act (section 149, Chapter V-1.1), paid entirely on commission;
4. a representative within the meaning of the Act respecting the distribution of financial products and services (Chapter D-9.2), paid entirely on commission;
5. a trainee within the context of a vocational training program recognized by law.
Going on vacation
The employer has the privilege of setting the dates of the vacation:
• he must inform the employee of the date of his vacation at least four weeks ahead of time;
• he cannot replace the vacation with a compensatory indemnity, except:
  1. when a collective agreement or a decree contains a special provision on this subject;
  2. when the establishment closes for two weeks during the annual vacation and when an employee entitled to three weeks asks to replace the latter with an indemnity.

Prior to the start of the leave, the employee must receive his vacation indemnity in a single installment.

Early vacation
The vacation must be taken in the 12 months following the reference year. However, if the employee requests it, the employer can allow him to take his vacation, in whole or in part, during the reference year. They are responsible for establishing together in what proportion the indemnity will be paid.

Postponed vacation
An employee may ask to postpone a vacation to the following year if, at the end of 12 months that follow the reference year, he is absent or on leave:
• by reason of illness, an organ or tissue donation for transplant, an accident or a criminal offence;
• for family or parental reasons.
The employer has the right to refuse the request. He must then pay the employee the vacation indemnity to which he is entitled.

Division of the vacation
If an employee’s vacation lasts more than one week, he can ask to divide the vacation into two periods. The employer may, however, refuse if the enterprise closes during the annual vacation or for a longer period.

With the employer’s authorization, the employee may divide his vacation into two parts (example: 8 Mondays).

If prior to March 29, 1995, the enterprise shut down for its annual vacation and has continued to do so since then, the employer may impose the division of the vacation into:
• a period of at least two consecutive weeks;
• a period corresponding to the duration of closure.

An employee is entitled to a continuous vacation. That is why a vacation of one week cannot be divided.

Additional leave
An employee who is already entitled to two weeks of vacation can request an additional leave of one week without wages, which would increase the total of his leave to three weeks. The employer cannot refuse this additional leave. However, the employee cannot demand to take it after his two other weeks of vacation. This additional leave cannot be divided or replaced with a compensatory indemnity.

Part-time employees and their vacations
An employer cannot reduce the length of the vacation of a part-time employee or modify the method of calculation of his indemnity in relation to that of other employees who perform the same work in the same establishment, simply because he works fewer hours per week.

This provision does not apply to a person who earns more than twice the minimum wage.
Absences and leaves for family or parental reasons

Short-term absences

An employee is entitled to a certain number of absences with or without pay, as the case may be, for events related to his family. The employee must notify the employer of his absence.

<table>
<thead>
<tr>
<th>Event</th>
<th>Description</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marriage or civil union of the employee</td>
<td>1 day with pay</td>
<td></td>
</tr>
<tr>
<td>Marriage or civil union of the employee’s</td>
<td>1 day without pay</td>
<td></td>
</tr>
<tr>
<td>child, his father or his mother, his</td>
<td></td>
<td></td>
</tr>
<tr>
<td>brother or his sister, the child of his</td>
<td></td>
<td></td>
</tr>
<tr>
<td>spouse</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Birth of his child</td>
<td>5 days of absence (including 2 with pay if the employee has been with his</td>
<td></td>
</tr>
<tr>
<td></td>
<td>employer for at least 60 days)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The employee must take his leave in the 15 days following the child's arrival</td>
<td></td>
</tr>
<tr>
<td></td>
<td>at home. This leave may be divided into days if the employee requests it.</td>
<td></td>
</tr>
<tr>
<td>Adoption of a child</td>
<td>5 days of absence (including 2 with pay if the employee has been with his</td>
<td></td>
</tr>
<tr>
<td></td>
<td>employer for at least 60 days)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The employee must take his leave in the 15 days following the child's arrival</td>
<td></td>
</tr>
<tr>
<td></td>
<td>at home. This leave may be divided into days if the employee requests it.</td>
<td></td>
</tr>
<tr>
<td>Termination of pregnancy beginning from</td>
<td>5 days of absence (including 2 with pay if the employee has been with his</td>
<td></td>
</tr>
<tr>
<td>the 20th week of pregnancy</td>
<td>employer for at least 60 days)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The employee must take his leave in the 15 days following the child's arrival</td>
<td></td>
</tr>
<tr>
<td></td>
<td>at home. This leave may be divided into days if the employee requests it.</td>
<td></td>
</tr>
<tr>
<td>Obligations related to the care, health</td>
<td>10 days per year, without pay</td>
<td></td>
</tr>
<tr>
<td>or education of the employee's child or</td>
<td>These leaves may be divided into days. A day may in turn be divided with the</td>
<td></td>
</tr>
<tr>
<td>the child of his spouse</td>
<td>employee’s authorization.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Presence required with the employee's child</td>
<td>Maximum of 12 weeks(^1), without pay, over a 12-month period</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The employee must have been in the employ of his employer for at least</td>
<td></td>
</tr>
<tr>
<td></td>
<td>three months.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(^1) The absence may be extended up to 104 weeks if his minor child suffers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>from a serious, potentially life-threatening illness.</td>
<td></td>
</tr>
<tr>
<td>Death or funeral of the employee's spouse,</td>
<td>1 day with pay and 4 days without pay</td>
<td></td>
</tr>
<tr>
<td>his child, his father or his mother, his</td>
<td></td>
<td></td>
</tr>
<tr>
<td>brother or his sister</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Death or funeral of the employee's son-in-law or daughter-in-law, his</td>
<td>1 day without pay</td>
<td></td>
</tr>
<tr>
<td>grandparents, his grandchildren, the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>father or the mother of his spouse, the</td>
<td></td>
<td></td>
</tr>
<tr>
<td>brother or the sister of his spouse</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

However, at the time of death or the funeral of a family member of an employee of the clothing industry, the employee is entitled to a different number of days of absence.
Death or funeral of the employee’s spouse, his child, his father or his mother, his brother or his sister: 3 consecutive days with pay and 2 days without pay.

Death or funeral of the employee’s grandparents, the father or mother of his spouse: 1 day with pay.

Death or funeral of his son-in-law, one of his grandchildren, the brother or the sister of his spouse: 1 day without pay.

Employees who work in clothing stores are not part of this industry.

**Long-term absences**

An employee may be absent from work when one of his next-of-kin is the victim of a criminal offence.

<table>
<thead>
<tr>
<th>Event</th>
<th>Description</th>
<th>Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disappearance</td>
<td>of a minor child of the employee</td>
<td>Maximum of 52 weeks, without pay. If the child is found before the expiry of this time period, the return to work must be within a maximum of 11 days later.</td>
</tr>
<tr>
<td>Presence required on the part of the employee</td>
<td>with his minor child who was seriously injured following a criminal offence that rendered him incapable of exercising his regular activities, with his minor child if he was seriously injured while trying to legally arrest an offender or while lending assistance to a peace officer making an arrest, with his minor child if he was seriously injured when he was legally preventing or trying to prevent an offence or when he was lending assistance to a peace officer.</td>
<td>Maximum of 104 weeks, without pay.</td>
</tr>
<tr>
<td>Death resulting from suicide</td>
<td>of the employee’s spouse or child</td>
<td>Maximum of 52 weeks, without pay.</td>
</tr>
<tr>
<td>Death resulting from a criminal offence</td>
<td>of the employee’s spouse or child</td>
<td>Maximum of 104 weeks, without pay.</td>
</tr>
<tr>
<td>Death</td>
<td>of his child or of his spouse while he was attempting to proceed with the arrest of an offender or was lending assistance to a peace officer making an arrest.</td>
<td>Maximum of 104 weeks, without pay.</td>
</tr>
<tr>
<td>Death</td>
<td>of his child or his spouse while he was legally preventing or attempting to prevent an offence or when he was assisting a peace officer.</td>
<td>Maximum of 104 weeks, without pay.</td>
</tr>
</tbody>
</table>

To be entitled to one of these leaves, the employee must have worked at the same place for at least three months. The employer must be able to check that the serious bodily injury or the death is the result of a criminal offence and that the disappeared person is in danger.

The employee is not entitled to these leaves if it is shown that he or the deceased person (spouse or major child) participated in the criminal act or contributed, by his serious fault, to the prejudice suffered. If it is his minor child who dies by participating in a criminal offence, the employee is entitled to the leaves.

If the employee continues during his leave to contribute to the various group insurance and retirement plans, the employer must do likewise.
Period of absence and return to work

The period of absence begins at the earliest on the day of the event and ends no later than 104 weeks thereafter. The employee must notify his employer as soon as possible of his absence and the reasons obliging him to be absent. If, during this period of absence, a new event occurs concerning the same child and gives entitlement to a new period of absence, it is the longer period that applies from the date of the first event.

The employer may ask the employee, notably concerning the length of the absence or its repetitive nature, to provide him with a document attesting these reasons. During his absence, if the employer is in agreement, the employee may return to work on a part-time or intermittent basis.

Upon the employee’s return, the employer must reinstate him in his former position and give him the wages and the benefits to which he would have been entitled, had he remained at work.

If his position has been abolished, the employee retains the same rights and privileges as those that he would have enjoyed, had he remained at work.

These provisions must not, however, give the employee an advantage that he would not have enjoyed, had he remained at work.

This right does not affect the possibility for the employer to dismiss, suspend or transfer an employee if the consequences, depending on the case, of the sickness, accident or criminal offence or the repetitive nature of the absences constitutes good and sufficient cause, according to the circumstances.

Finally, at the time of a dismissal or a layoff that would have included the employee had he remained at work, this employee retains the same rights as the other employees actually dismissed or laid off, notably concerning the return to work.
Absences owing to sickness, an organ or tissue donation for transplant, an accident or a criminal offence

An employee with three months of uninterrupted service with the same employer may be absent from work, without pay:

- if he is sick, makes an organ or tissue donation for transplant or is the victim of an accident Up to 26 weeks per 12-month period
- if he suffers serious injuries following a criminal offence rendering him incapable of holding his usual position Up to 104 weeks\(^1\)
  (The period of absence begins at the earliest on the date on which the criminal offence was committed or at the expiry of the 26-week period if the employee was absent owing to sickness, an organ or tissue donation for transplant, or accident. It ends no later than 104 weeks after the criminal offence was committed.)
- if he is injured while attempting to legally arrest an offender or while lending assistance to a peace officer making an arrest
- if he is injured while legally preventing or attempting to prevent an offence and when he is lending assistance to a peace officer

The employee is not entitled to these leaves if it is shown that he participated in the criminal offence and in the cases where it involves an employment injury within the meaning of the Act respecting industrial accidents and occupational diseases.

The employee must notify his employer as soon as possible of his absence and of the reasons. The employer may ask that the employee provide an attestation document to justify the length of the absence or its repetitive nature.

If the employee continues to contribute to the various group insurance and retirement plans during his leave, the employer must do likewise.

In the event of an occupational illness or industrial accident, employees are covered by the occupational health and safety plan administered by the CNESST. An employee’s employment and income are protected. For more information, please see our website.

Return to work

With the employer’s consent, the employee can return to work on a part-time or intermittent basis during the period of absence that has been granted to him because he suffered a serious bodily injury following a criminal offence.

When the employee returns, the employer must reinstate him in his former position and give him the wages and the benefits to which he would have been entitled, had he remained at work. If his position has been abolished, the employee retains the same rights and privileges as those that he would have enjoyed, had he remained at work.

These provisions must not, however, give the employee an advantage that he would not have enjoyed, had he remained at work.

This right does not affect the possibility for the employer to dismiss, suspend or transfer an employee if the consequences, depending on the case, of the sickness, accident or criminal offence or the repetitive nature of the absences constitutes good and sufficient cause, according to the circumstances.

Finally, at the time of a dismissal or a layoff that would have included the employee had he remained at work, this employee retains the same rights as the other employees actually dismissed or laid off, notably concerning the return to work.
Maternity leave

In Québec, pregnant employees are entitled to a leave without pay of a maximum duration of 18 continuous weeks. The parental leave may be added to the maternity leave.

The maternity leave may be spread out as the employee sees fit before or after the expected date of delivery. The employer may grant a longer maternity leave if the employee requests it.

The maternity leave may begin no earlier than the 16th week preceding the expected date of delivery and may end no later than 18 weeks later. If the leave begins at the time of delivery, the week of the delivery is not included in the calculation.

Starting from the 6th week before the delivery, the employer may require, in writing, a medical certificate attesting that the employee is fit for work. If the employee does not provide the certificate within eight days, the employer may, always by written notice, oblige her to go on maternity leave.

Following an agreement with the employer, the leave may be:

- suspended, if the employee’s child is hospitalized and a temporary return to work is possible;
- extended, if the child’s or the mother’s health requires it.

The employee must then provide an opinion of the physician before the end of the initial leave. In certain very specific cases, at the employee’s request, the leave may be divided into weeks if her child is hospitalized or if the employee is absent because she herself or one of her close relatives is sick.

If the delivery occurs after the expected date, the employee is entitled to at least two weeks of maternity leave afterwards.

If the employee continues to contribute to the various group insurance and retirement plans during her leave, the employer must do likewise.

Absences during pregnancy

An employee may be absent from work, without pay, as often as is necessary, for examinations related to her pregnancy. She must notify her employer of these absences as soon as possible.

Special maternity leave

The employee is entitled to a special maternity leave, without pay, where there is a risk of termination of pregnancy or a danger to the health of the mother or unborn child caused by the pregnancy. The employee must provide a medical certificate attesting the danger and indicating the length of the leave and the expected date of delivery. In such a case, the regular maternity leave begins four weeks before the expected date of delivery.

Termination of pregnancy

When a termination of pregnancy occurs prior to the start of the 20th week preceding the expected date of delivery, the leave is of a maximum length of three weeks, except if a medical certificate attests the need to extend the leave.

When the termination of pregnancy occurs starting from the 20th week, the employee is entitled to a maternity leave without pay of a maximum length of 18 continuous weeks starting from the week of the event. The employee must notify her employer as soon as possible and give him a written notice indicating the expected date of return to work. This notice must be accompanied by a medical certificate.

Written notices from the employee to her employer

The employee must give her employer, three weeks before leaving, a written notice indicating the date when she will go on maternity leave and that of her return to work. The notice period may be shorter if her state of health requires that she leave sooner. She must then provide a medical certificate attesting the reasons that oblige her to leave work.

The written notice must always be accompanied with a medical certificate attesting the pregnancy and the expected date of delivery. A written report signed by a midwife can replace the medical certificate.

In the case of termination of pregnancy or premature delivery, the employee must, as soon as possible, give her employer written notice informing him of the event having occurred and the expected date of her return to work, accompanied by a medical certificate attesting the event.
Return to work

At the end of the maternity leave, the employer must reinstate the employee in her former position and give her the wages and the benefits that she would have been entitled to, had she remained at work.

If her position has been abolished, the employee retains the same rights and privileges as those that she would have enjoyed, had she remained at work.

These provisions must not, however, give the employee an advantage that she would not have enjoyed, had she remained at work.

The employee may return to work before the date mentioned on the notice that she gave her employer prior to leaving. She must send him, three weeks beforehand, a new notice indicating the date of her return.

If the employee wishes to return to work less than two weeks after her delivery, the employer may require a medical certificate attesting that she is fit for work.

If the employee does not return to work on the date stipulated in the notice, the employer may presume that she has quit her job.

Vacation

An absence for a maternity leave during the reference year does not reduce the length of the vacation of an employee. She is entitled to an indemnity that is equivalent, according to her length of uninterrupted service, to two or three times the weekly average of the wages earned during the reference year. However, the parental leave does not allow the employee to accumulate vacation pay.

Protective reassignment

The provisions concerning protective reassignment are stipulated in the Act respecting occupational health and safety. For more information, contact the CNESST by telephone at 1-844-838-0808.

Québec Parental Insurance Plan

According to the Québec Parental Insurance Plan, benefits are paid to support the income of a female employee who is absent from work after the birth or adoption of a child. To learn more, get in touch with an agent of the Centre de service à la clientèle of the Ministère de l’Emploi et de la Solidarité sociale at the following number: 1-888-610-7727. It is also possible to make an application for benefits on-line: www.rqap.gouv.qc.ca.

Example of the calculation of the vacation indemnity in case of absence for maternity leave and parental leave

Ann worked 20 weeks during the reference year and took 18 weeks of maternity leave and 14 weeks of parental leave. She earned an average of $380 per week and was entitled to two weeks of annual leave. How is her indemnity calculated?

<table>
<thead>
<tr>
<th>Calculation method</th>
<th>Formula</th>
<th>Ann's indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average weekly wage</td>
<td>$380</td>
<td></td>
</tr>
<tr>
<td>X 2 or 3 times the average weekly wage earned (depending on the uninterrupted service)</td>
<td>X 2</td>
<td></td>
</tr>
<tr>
<td>=</td>
<td>=</td>
<td></td>
</tr>
<tr>
<td>$760</td>
<td></td>
<td></td>
</tr>
<tr>
<td>X total (weeks worked + maternity leave)</td>
<td>(20 weeks worked + 18 weeks of maternity leave) X 38</td>
<td></td>
</tr>
<tr>
<td>=</td>
<td>=</td>
<td></td>
</tr>
<tr>
<td>$28,880</td>
<td></td>
<td></td>
</tr>
<tr>
<td>÷ number of weeks in the year</td>
<td>÷ 52</td>
<td></td>
</tr>
<tr>
<td>=</td>
<td>=</td>
<td></td>
</tr>
<tr>
<td>Annual leave indemnity</td>
<td>$555.38</td>
<td></td>
</tr>
</tbody>
</table>

In this case, to calculate the indemnity, it is necessary to take into account the number of weeks worked and the number of weeks of maternity leave; without taking into account the weeks of absence for parental leave as the Act does not provide for this.

Example of a calculation is provided for information purposes only. For further information, contact the CNESST by telephone at 1-844-838-0808 or visit its website, click on the “Labour Standards” link and consult the “Vacation” standard under the “Leaves and Absences” heading. Also refer to the Act respecting labour standards.
Paternity leave
An employee is entitled to a leave of five continuous weeks, without pay, at the birth of his child. The parental leave can be added to the paternity leave.

This paternity leave can begin at the earliest the week of the child’s birth and must end no later than 52 weeks thereafter. The employee must notify his employer in writing at least three weeks prior to the start of his leave by indicating the expected date of the start of the leave and that of the return to work. This notice period may, however, be less if the child’s birth occurs prior to the expected date of birth.

Return to work
At the end of the leave, the employer must reinstate the employee in his former position and give him the wages and the benefits that he would have been entitled to, had he remained at work.

If his position has been abolished, the employee retains the same rights and privileges as those he would have enjoyed, had he remained at work.

These provisions must not, however, give the employee an advantage that he would not have enjoyed, had he remained at work.

If the employee does not return to work on the date stipulated in the notice, the employer may presume that he has quit his job.

Vacation
An absence for a paternity leave during the reference year does not reduce the length of the vacation of an employee. He is entitled to an indemnity that is equivalent, according to his length of uninterrupted service, to two or three times the weekly average of the wages earned during the reference year. However, the parental leave does not allow the employee to accumulate vacation pay.

Québec Parental Insurance Plan
According to the Québec Parental Insurance Plan, benefits are paid to support the income of an employee because he has become a new father. To learn more, get in touch with an agent of the Centre de service à la clientèle of the Ministère du Travail, de l’Emploi et de la Solidarité sociale at the following number: 1-888-610-7727. It is also possible to make an application for benefits on-line: www.rqap.gouv.qc.ca.
Parental leave

Each parent of a newborn or a newly adopted child is entitled to a parental leave without pay that can last up to 52 weeks. The person who adopts the child of his spouse is also entitled to this leave.

The parental leave cannot begin before the week of the birth of the newborn or, in the case of an adoption, before the week in which the child is entrusted to the employee. Nor may it begin before the week in which the employee leaves his work to obtain custody of the child outside Québec.

The parental leave is added to the 18-week maternity leave or the 5-week paternity leave. The parental leave may be paid under the terms and conditions of the Québec Parental Insurance Plan and be shared between the father and the mother.

The parental leave may thus end not later than 70 weeks after the birth or, in the case of adoption, 70 weeks after the child has been entrusted to the employee. This leave cannot be divided unless there is an agreement with the employer or in the cases specified by law.

If the employee continues to contribute to the various group insurance and retirement plans during his leave, the employer must do likewise.

Notice to the employer

The parental leave must be preceded by a notice of at least three weeks indicating to the employer the dates of the start and end of the leave. This notice period may be less if the presence of the employee is required earlier with the newborn or newly adopted child or the mother, owing to their state of health.

Return to work

The employee may resume his work on a part-time or intermittent basis during his parental leave if the employer consents thereto.

At the end of the parental leave, the employer must reinstate the employee in his former position and give him the wages and the benefits that he would have been entitled to, had he remained at work.

If his position has been abolished, the employee retains the same rights and privileges as those he would have enjoyed, had he remained at work.

These provisions must not, however, give the employee an advantage that he would not have enjoyed, had he remained at work.

The employee may return to work before the date mentioned in the notice that he gave to his employer prior to leaving. He must send his employer, three weeks beforehand, a new notice indicating the date of his return.

If the employee does not return to work on the date stipulated in the notice, the employer may presume that the employee has quit his job.

Vacation

Unlike the maternity leave and the paternity leave, the parental leave has an effect on the calculation of the vacation.
3. At the end of employment

**Vacation pay payable**
At the end of the contract of employment, the employer must pay the employee an indemnity for the vacation that he has not taken, as well as an indemnity equivalent to 4% or 6% (according to the length of uninterrupted service) of the wages earned during the reference year in progress.

**Notice of termination of employment**
An employer must give the employee written notice of termination of employment before terminating the contract of employment or before laying him off for a period of more than six months. The employer is not required to give such notice at the end of a fixed-term contract or if the employee has completed the undertaking for which he had been hired.

The time periods for giving the employee notice vary according to the length of his uninterrupted service.

<table>
<thead>
<tr>
<th>Length of uninterrupted service</th>
<th>Time period between the notice and leaving</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 months to less than 1 year</td>
<td>1 week</td>
</tr>
<tr>
<td>1 year to less than 5 years</td>
<td>2 weeks</td>
</tr>
<tr>
<td>5 years to less than 10 years</td>
<td>4 weeks</td>
</tr>
<tr>
<td>10 years and over</td>
<td>8 weeks</td>
</tr>
</tbody>
</table>

**Exceptions**
Some employees are excluded from the application of the provisions related to the notice of termination of employment and the notice of layoff for six months or more. They are:

- employees who are not credited with three months of uninterrupted service;
- employees who have committed a serious fault;
- employees dismissed or laid off owing to a case of superior force (example: a fire);
- employees whose contract for a fixed term expires;
- employees who have completed the specific undertaking for which they had been hired.

**Indemnity**
If the employer does not give the employee the notice of termination of employment in the stipulated time periods or if he gives insufficient notice, he will have to pay the employee a compensatory indemnity. This indemnity will have to be equal to the wages that the employee would normally have earned between the date on which the notice should have been sent to him and the end of employment. The indemnity must not take overtime into account.

**Particular provisions**
The indemnity of an employee paid in whole or in part on commission corresponds to his average weekly wages during the complete periods of pay of the three months preceding his termination of employment or layoff for more than six months.

A notice of termination of employment is nil and of no value if it is given to an employee during his layoff, except in the case of a seasonal job, whose duration does not exceed six months per year.

Generally, an employee who has a recall right for more than six months under a collective agreement and who was laid off for six months or more can demand his indemnity if he did not receive a layoff notice:
1. at the expiry of his recall right if he is not recalled to work;
2. one year after the layoff.
**Example of the calculation of the indemnity of an employee paid in whole or in part on commission**

Frank is credited with 11 years of uninterrupted service. He receives $150 in basic wages per week plus commissions. He is paid on a weekly basis. The employer decides to lay him off permanently and wants to pay him a compensatory leave rather than give him a notice of termination of employment. How is the indemnity calculated?

Frank is entitled to eight weeks’ notice as he is credited with over ten years of uninterrupted service. It is necessary to take into account his average weekly wage during the complete periods of pay included in the three months preceding his layoff.

### Calculation method

<table>
<thead>
<tr>
<th>Formula</th>
<th>Frank’s indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of weeks worked during the three months preceding the layoff X basic wage</td>
<td>12 X $150</td>
</tr>
<tr>
<td>=</td>
<td>=</td>
</tr>
<tr>
<td>+ commissions received during the three months</td>
<td>+ $4,000</td>
</tr>
<tr>
<td>=</td>
<td>=</td>
</tr>
<tr>
<td>Wages received during the three months</td>
<td>$5,800</td>
</tr>
<tr>
<td>+ number of weeks worked during the three months</td>
<td>+ 12</td>
</tr>
<tr>
<td>=</td>
<td>=</td>
</tr>
<tr>
<td>Average usual wage</td>
<td>$483.33</td>
</tr>
<tr>
<td>X number of weeks equivalent to the length of the notice according to the length of uninterrupted service</td>
<td>X 8</td>
</tr>
<tr>
<td>=</td>
<td>=</td>
</tr>
<tr>
<td>Compensatory indemnity</td>
<td>$3,866.64</td>
</tr>
</tbody>
</table>

This example of a calculation is provided for information purposes only. For further information, contact the CNESST by telephone at 1-844-838-0808 or visit its website, click on the “Labour Standards” link and consult the “Notice of termination of employment” standard under the “End of employment” heading.

**Notice of collective dismissal**

A collective dismissal occurs when the employer terminates the employment of ten employees or more in the same establishment over a period of two months or lays off at least ten employees of the same establishment for a duration of more than six months.

Several provisions apply to the notice of collective dismissal. For further information, contact the CNESST by telephone at 1-844-838-0808 or visit its website, click on the “Labour Standards” link and consult the “Notice of dismissal” standard under the “End of employment” heading.

**Bankruptcy of an enterprise**

When an enterprise declares bankruptcy, the CNESST has the power, under certain conditions, to institute legal proceedings against the administrators. An employee who believes that his rights have been violated can file a complaint to collect the wages, the vacation or statutory holiday indemnities, the absences and leaves for family or parental reasons or every other sum that could be owing to him by an enterprise that has declared bankruptcy.

For further information, contact the CNESST by telephone at 1-844-838-0808 or visit its website, click on the “Labour Standards” link and consult the “Bankruptcy and change in the enterprise” standard under the “End of employment” heading.

**Reasonable notice under the Civil Code**

An employee who believes that he is entitled to reasonable notice or a compensatory indemnity under the Civil Code may request it from his employer. This recourse may be exercised personally by the employee or, at his expense, with the assistance of the lawyer of his choice.

The employee is also required to give reasonable notice to his employer before quitting his job.
3. In case of disagreement

Before filing a complaint with the CNESST, it is suggested that the employee meet with his employer to clarify the situation that is of concern to him. If the steps are inconclusive, the employee may file a complaint within the stipulated time periods in order to not lose his rights.

Unjustified change to the status of an employee

An employer cannot modify the status of one of his employees to have him become a non-salaried contractor or a self-employed person if no change in the method of operation of his enterprise requires such a modification.

If such a modification occurs without being justified by real changes in the enterprise, or if the employee is not in agreement with his employer about the consequences that the changes in the enterprise should have on his status, he can file a complaint in writing with the CNESST.

For further information, contact the CNESST by telephone at 1-844-838-0808 or visit its website, click on the “Labour Standards” link and consult the “Unjustified change to the status of an employee” standard under the “In case of... » heading.

Pecuniary complaint

The employee can file a complaint with the CNESST if he believes that his employer is not respecting his rights notably concerning the payment of his wages, overtime, vacation, statutory holidays and notice of termination indemnities.

The CNESST can institute legal proceedings against the employer on behalf of the employee to attempt to collect the sums that are owing to him for the work that he performed.

The employee has one year to file a complaint from the date of the offence, namely the date on which the employer should have paid him.

How to file a complaint

Employees may file a complaint by telephone by contacting the CNESST at 1-844-838-0808 or using the directed path on-line complaint filing service, available in the “Labour Standards” section of the CNESST website.

After the filing of a complaint

The CNESST does not disclose the employee’s identity during the investigation, except if the employee gives the Commission permission to do so.

The CNESST can refuse to continue an investigation if it deems that the complaint is frivolous, made in bad faith or is unfounded. It shall then notify the employee by registered or certified mail and give him the reasons for its decision.

The employee may, however, submit a written request for review of the decision to the Commission’s Director General of Legal Affairs in the 30 days that follow.

If the Commission is of the opinion that a sum of money is owing to the employee, it can take appropriate steps to claim this sum. In this case, the employee does not have any expenses to pay.
Complaint for a prohibited practice

An employer is prohibited from exercising sanctions against an employee under the following circumstances:

1. the employee exercised one of his rights set out in the National Holiday Act, the Act respecting labour standards or its regulations, for example, claiming wages or joining a voluntary retirement savings plan established by the employer;
2. he has been working for at least three months for the same employer and is absent for a sickness leave or following a criminal offence;
3. he has given information to the Commission on the application of standards or has given evidence in a proceeding related thereto;
4. a seizure by garnishment has been made against him, for example, by the Revenu Québec because he has not paid his income tax correctly;
5. he is a debtor of support and withholdings are being made from his wages for the payment of alimony;
6. even if he has taken reasonable steps to fulfill his family obligations, he had to refuse to work beyond his usual work hours to see to:
   • the care, health or education of his child or that of his spouse;
   • the health of his spouse, his father, his mother, a brother, a sister or one of his grandparents;
7. the employee denounced a wrongful act concerning the awarding, obtainment or execution of a contract in the public sector or assisted in an investigation or inquiry into said act;
8. the employee contacted the Inspector General of the City of Montréal or collaborated in an inspection that the Inspector General conducted.

Nor is the employer entitled to take disciplinary measures against a female employee because she is pregnant. Under these circumstances, the employer does not have the right to impose on the employee the following measures: dismiss her, suspend her, transfer her, discriminate or exercise reprisals against her.

The Act also prohibits his employer from dismissing him, suspending him, retiring him, or exercising discriminatory measures or reprisals against him because an employee has reached the age or the number of years of service required to retire.

Lastly, an employer may not impose any sanction on an employee for the purpose of evading the application of the National Holiday Act, the Act respecting labour standards or its regulations or because the Commission is conducting an inquiry regarding the application of labour standards in one of the employer’s establishments.

An employee may file a complaint with the CNESST if he believes that he was the subject of one of these prohibited practices.

An employee who is the victim of a prohibited practice has 45 days from when the measure is taken against him to file a complaint with the Commission. In cases of involuntary retirement, the time limit is 90 days.

How to file a complaint

The employee may file a complaint by telephone by contacting the Service des renseignements of the Commission or on the website by using the directed path on-line complaint filing service. A complaint filed with the Tribunal administratif du travail is also admissible.

After the filing of the complaint

The CNESST makes sure that the complaint is admissible.

If the Commission considers the complaint inadmissible, it writes to the employee to notify him that it is terminating the process and explains why. The employee may submit a written request for a review of the decision to the Commission’s Director General of Legal Affairs in the 30 days after having received the notice.

If the complaint is deemed admissible, the Commission notifies the employee that it will follow up on the complaint as soon as possible. It also informs the employer that a complaint for a prohibited practice has been filed against him. Finally, it designates a person who will offer them a mediation session. This is a method for settling a complaint in an amicable manner in which the employee and the employer endeavour to reach an agreement.
Before the Tribunal administratif du travail
If no agreement is reached, the complaint is referred to the Tribunal administratif du travail. The file is also submitted to a lawyer of the Direction générale des affaires juridiques of the CNESST in preparation for a hearing.

The lawyer designated to handle the employee’s complaint gets in touch with him. The lawyer’s services are free. If the employee prefers, he can be represented by the lawyer of his choice at his own expense.

A hearing before the Tribunal administratif du travail resembles what takes place in a courthouse. For example, the employee is asked to give his version of the facts. He can also call witnesses to testify. The employer has the same rights.

The decision of the Tribunal administratif du travail
The Tribunal administratif du travail can accept or reject the employee’s complaint.

If the complaint is accepted, the tribunal can order the employer:
1. to reinstate the employee in the job that he held prior to the taking of the measure;
2. to pay the employee, as an indemnity, the equivalent of the wages and the other benefits lost following the disciplinary measure that was imposed.

In the case of a domestic, the tribunal can only order the employer to pay the domestic an indemnity corresponding to the wages and other benefits of which he was deprived as a result of being dismissed.

Complaint for a dismissal not made for good and sufficient cause
The recourse in case of a dismissal not made for good and sufficient cause is a job protection measure similar to the grievance that employees governed by a collective agreement generally benefit from. In some situations, it provides for reinstating the employee in his work.

An employee who has worked for the same enterprise for two years or more and who believes that he was dismissed without good and sufficient cause may file a complaint with the CNESST. The time limit is set at 45 days after the dismissal. However, the standard does not apply to an employee who benefits from an equivalent recourse under another Act or a collective agreement.

How to file a complaint
Employees may file complaints by telephone by contacting the CNESST at 1-844-838-0808 or using the directed path on-line complaint filing service, available in the “Labour Standards” section of the CNESST website. A complaint filed with the Tribunal administratif du travail is also admissible.

After the filing of the complaint
The CNESST makes sure of the admissibility of the complaint. If the Commission considers the complaint inadmissible, it writes to the employee to notify him that it is terminating the process and explains why. The employee may submit a written request for a review of the decision to the Commission’s Director General of Legal Affairs in the 30 days after having received the notice.

If the complaint is deemed admissible, the Commission notifies the employee that it will follow up on the complaint as soon as possible. It also informs the employer that a complaint for a dismissal not made for good and sufficient cause has been filed against him. Finally, it designates a person who will offer them a mediation session. This is a method for settling a complaint in an amicable manner in which the employee and the employer try to reach an agreement. The Commission may also require from the employer a written document containing the reasons for the dismissal.
Before the Tribunal administratif du travail
If no agreement is reached, the complaint is referred to the Tribunal administratif du travail. The file is also submitted to a lawyer of the Direction générale des affaires juridiques of the CNESST in preparation for a hearing.

The lawyer designated to handle the employee's complaint gets in touch with him. The lawyer's services are free. If the employee prefers, he can be represented by the lawyer of his choice at his own expense.

A hearing before the Tribunal administratif du travail resembles what takes place in a courthouse. For example, the employee is asked to give his version of the facts. He can also have witnesses testify. The employer has the same rights.

The decision of the Tribunal administratif du travail
The Tribunal administratif du travail can accept or reject the employee's complaint.

If the complaint is accepted, the tribunal can:

1. order the employer to reinstate the employee in the job that he held prior to his dismissal;
2. order the employer to pay the employee an indemnity corresponding to the wages lost since his dismissal;
3. render any other decision that he considers fair and reasonable.

In the case of a domestic, the tribunal can only order the employer to pay the domestic an indemnity corresponding to the wages and other benefits of which he was deprived as a result of being dismissed.

Complaint for psychological harassment
Every employee is entitled to a workplace free from psychological harassment.

Psychological harassment is vexatious conduct that is manifested by repetitive behaviours, comments, acts or gestures:

• that are hostile or unwanted;
• that adversely affect the employee's dignity or psychological integrity;
• that make the workplace unhealthy.

One serious incidence may constitute psychological harassment if it has the same consequences and if it produces a continuous harmful effect on the employee.

Who should you contact?
Regardless of the employee’s hierarchical level in the enterprise, he can assert his rights in the event of psychological harassment. However, the appropriate place for asserting his rights varies according to whether he comes from the public or private sector and whether he is a unionized or non-unionized employee.

Employee subject to the Act respecting labour standards, including senior managerial personnel
CNESST
1-844-838-0808
On-line services, on-line complaints:
cnesst.gouv.qc.ca/normes

Unionized employee
Union to which the employee belongs
Public service employee not governed by a collective agreement, including the members and directors of organizations
Commission de la fonction publique
418-643-1425
Elsewhere in Québec, toll-free: 1-800-432-0432

A non-unionized employee subject to the Act respecting labour standards must file his complaint in the 90 days following the last incidence of psychological harassment.
Mediation

In the case of a complaint for a prohibited practice, for a dismissal not made for good and sufficient cause and for psychological harassment, if the complaint is admissible, it is entrusted to a mediator who contacts the employee and the employer to offer them his services.

With the mediator’s help, they endeavour together to find solutions that are satisfactory to both parties. This efficient service makes it possible to settle close to 70% of complaints.

An advantageous service

In a climate that is conducive to discussions, the mediator helps the employee re-establish the dialogue with the employer. In the presence of one another, they can express their respective points of view, examine possible solutions and negotiate the terms of an agreement to which they freely consent.

Mediation makes it possible to:

- actively participate in the search for satisfactory solutions;
- keep control over the decisions to be made;
- save time and money and limit worries;
- arrive at an agreement that is freely reached.

Mediation: it’s confidential

The mediators of the CNESST are subject to rules of ethics. These rules specify their role, their duties and their responsibilities, notably concerning impartiality, fairness and confidentiality.

To be fully objective, the mediator cannot already have acted in other capacities in the case. He must also act in full confidentiality. No one may compel him to disclose the information that has been entrusted to him.

Either the employee or the employer may refuse mediation; furthermore, mediation may not result in an agreement. The complaint is then referred to the Tribunal administratif du travail for a hearing.

At the time of the referral of the complaint, the file is submitted to a lawyer of the Direction générale des affaires juridiques of the CNESST. He gets in touch with the employee. His services are free.
If you are dissatisfied with the services obtained

The CNESST prioritizes the quality of the services it offers the public. With this in mind, it has developed the Politique de gestion des plaintes sur la qualité des services, which you may consult by visiting www.cnesst.gouv.qc.ca.

To learn more about the Commission’s commitments to its clientele, refer to the Statement of Services for the Public.

Filing a complaint regarding the quality of services

If you are dissatisfied with the services you received from the CNESST, please contact us. Express all feedback or dissatisfaction related to the services you received to the person you usually contact.

If you are still dissatisfied despite the efforts made to serve you, you may file a complaint.

You must address your complaint to the Services des plaintes sur la qualité, either verbally or in writing. This service is separate from the administrative units. Your complaint must include:

• your surname and given name;
• your telephone number;
• specific details regarding the reason for your complaint.

The CNESST will contact you within two business days of receiving your request.

Service des plaintes sur la qualité

By mail

Service des plaintes sur la qualité
CNESST
Case postale 6056, succursale Centre-ville
Montréal (Québec) H3C 4E1
Telephone: 514-906-3040 (Montréal area)
Elsewhere in Québec, toll-free: 1-800-667-7585
Fax: 514-906-3042
E-mail: plaintes.qualite@cnesst.gouv.qc.ca