



OCCUPATIONAL  
HEALTH AND SAFETY

# Directors' liability

General information

## As a director of a corporation considered an employer by the CNESST, what is my liability?

You are the director of a corporation (for the purposes of this brochure, this includes unincorporated associations, organizations and agencies) if you sit on its Board of Directors. You must make sure that the corporation pays its occupational health and safety (OHS) contributions if it is considered an employer by the CNESST.

If the corporation fails to pay a CNESST contribution when due and you are a director of that corporation, you may become jointly liable with the corporation for that contribution (as well as for any related interest and penalties) under the following circumstances:

- A certificate of default obtained with respect to the employer is executed but does not result in recovery of all amounts owing;
- A winding-up order is made against the employer, or the employer becomes bankrupt within the meaning of the *Bankruptcy and Insolvency Act* and a claim is filed;
- The employer has instituted proceedings for its winding-up or dissolution, or it has been dissolved.

Only amounts that the employer has failed to pay are recoverable from a director.

Under these circumstances, the CNESST may require that the director pay the assessment as if he or she were the employer.

## Can I be relieved of my liability as a director?

There are **three scenarios** in which you may be relieved of your liability:

- You exercised a reasonable degree of care, diligence and skill under the circumstances;
- You could not, under these same circumstances, have been aware of the failure to pay the contribution owing to the CNESST;
- You were one of the employer's directors at the time of the default, but you had ceased, for the last time, to be one of the employer's directors for at least two years at the time of the CNESST's claim against you for amounts owing from the employer.

You have certain responsibilities as a corporate director. If you become or you cease to be a corporate director, **make sure the necessary changes are made to the enterprise register** and to official documents.



## What does acting with diligence mean for a director?

You must be able to provide evidence that you acted with reasonable diligence, and that you were proactive in this respect. In addition, the obligation to act with diligence is your personal responsibility. It cannot be delegated to a third party, such as another director or an accountant.

You can avoid having to pay a CNESTT contribution owed by the employer. Here's what to do:

- Make sure the enterprise register and official documents are up to date with respect to your role as corporate director;
- Make sure that the employer pays amounts owing to the CNESTT;
- Stay up to date on what is happening in the corporation;
- Act before payment default, not after failure to pay amounts owing.

*For further information, call us at 1 844 838-0808 or check out our website at [cnesst.gouv.qc.ca/sst](http://cnesst.gouv.qc.ca/sst).*



## According to the law ...

Since January 1, 2011, corporate directors can be held jointly liable for payment of occupational health and safety (OHS) contributions owing to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) and for associated penalties and interest. Like other ministries or agencies, the CNESST thus has remedies to claim from directors the payment of assessments the corporation has failed to pay.

The purpose of this brochure is to help in understanding the terms and conditions of claims against directors. It has no legal force and cannot replace the laws and regulations applied by the CNESST. This brochure is based on a similar brochure issued by Revenu Québec.



## To CONTACT US

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