



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 40

(2006, chapter 53)

**An Act to amend the Act respecting
industrial accidents and occupational
diseases and the Workers' Compensation
Act**

Introduced 14 November 2006

Passage in principle 29 November 2006

Passage 13 December 2006

Assented to 14 December 2006

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EXPLANATORY NOTES

This bill amends the Act respecting industrial accidents and occupational diseases mainly with respect to financial matters.

The bill thus clarifies the provisions concerning the insurance coverage applicable to the members of the board of directors of a legal person.

The bill also changes the way the employers' assessment is collected, providing for it to be paid in periodic payments calculated on the basis of the salaries or wages paid to workers over a period. It also introduces certain provisions to ensure employers' compliance with the legal requirements with respect to financing.

Lastly, the bill amends certain provisions concerning employers personally liable for the payment of benefits, in particular in order to clarify the rules governing the guarantees they must provide to ensure the payment of benefits to their workers.

LEGISLATION AMENDED BY THIS BILL:

- Workers' Compensation Act (R.S.Q., chapter A-3);
- Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001).

Bill 40

AN ACT TO AMEND THE ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES AND THE WORKERS' COMPENSATION ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

1. Section 2 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) is amended

(1) by inserting the following definition after the definition of “establishment”:

““executive officer” means a member of the board of directors of a legal person who also exercises the functions of president, vice-president, secretary or treasurer of the legal person;”;

(2) by adding the following paragraph after paragraph 3 in the definition of “worker”:

“(4) an executive officer of a legal person regardless of the work the executive officer does for the legal person.”

2. Section 5 of the Act is amended by adding the following paragraph at the end:

“A person who, for the purposes of his establishment, uses a worker whose services are lent or hired out is deemed to be an employer for the purposes of section 316, even if the person has no workers in his employ.”

3. The Act is amended by inserting the following section after section 6:

“6.1. The second paragraph of section 33 of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (chapter P-45) does not apply for the purpose of determining whether a person is an executive officer on a given date.”

4. The Act is amended by inserting the following after section 10:

“PAPER CARRIER

“**10.1.** A paper carrier is considered a worker in the employ of the person who hires him.”

5. Section 18 of the Act is amended

(1) by replacing “and directors” in the first line by “, executive officers and members of the boards of directors”;

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

“However, a worker who sits on the board of directors of the legal person that employs him need not register with the Commission to have protection under this Act when the worker exercises his functions as a member of that board of directors.”

6. Section 34 of the Act is amended by inserting the following paragraph after the first paragraph:

“For the purposes of the first paragraph, the assessment due by the former employer on the date of the alienation or transfer includes the assessment that can be computed on the basis of wages paid by the former employer until that date and the rate applicable on that date under section 305 even if a notice of assessment has not been issued.”

7. Sections 290 and 291 of the Act are replaced by the following sections:

“**290.** An employer who begins operating must notify the Commission of that fact in the manner, subject to the conditions and within the time prescribed by regulation.

“**291.** For the purposes of this chapter, the employer shall declare to the Commission the gross wages of the employer’s workers and the other information prescribed by regulation, in the manner, subject to the conditions and within the time also prescribed by regulation.

The employer or a representative of the employer who has personal knowledge of the information given shall attest to its accuracy if so required by regulation.”

8. Sections 292 to 294.1 of the Act are repealed.

9. Section 295 of the Act is amended by replacing “to 294” in the second line by “and 291”.

10. Section 296 of the Act is replaced by the following section:

“296. For the purposes of this chapter, the Commission may make a regulation requiring an employer to keep registers or records or retain supporting documents concerning the information contained in the registers or other records, according to the standards prescribed by regulation.

A person who keeps such registers or records or retains such supporting documents shall, if so required by the Commission, make them available to the Commission or send a copy, or the registers, records or supporting documents themselves, to the Commission.”

11. Sections 306 and 307 of the Act are replaced by the following sections:

“306. The Commission shall compute an assessment on the basis of the wages declared by the employer in accordance with section 291, taking into account any periodic payments made by the employer.

“307. If an employer fails to send a notice or the information required under section 290 or 291 within the prescribed time or if the information provided is inaccurate on its face, the Commission may fix the employer’s assessment in the manner it considers appropriate.”

12. Section 315 of the Act is replaced by the following sections:

“315. An employer must pay the Commission the amount of the assessment in the manner, subject to the conditions and within the time prescribed by regulation.

“315.1. An employer belonging to a category determined by regulation must, on the dates, for the periods and subject to the conditions prescribed by regulation, make periodic payments in the amount determined according to the method prescribed by regulation.

The employer must also notify the Commission, on the dates and subject to the conditions prescribed by regulation, if the amount of a payment is equal to zero.

“315.2. For the purpose of computing the amount of a payment under section 315.1, the Commission may impose the use of a provisional rate fixed according to the method it considers appropriate.”

13. Section 316 of the Act is amended by inserting the following paragraph after the third paragraph:

“If an employer proves that he is retaining the services of a contractor, the Commission may inform the employer whether an assessment is due by that contractor.”

14. Section 319 of the Act is replaced by the following section:

“319. An employer who fails to send a notice or information required under section 290 or 291 within the time prescribed incurs a penalty of \$25 per day for each day of default up to an amount of \$2,500.”

15. Section 321 of the Act is amended by replacing “to 10% of” in the fourth line of the first paragraph by “to”.

16. The Act is amended by inserting the following sections after section 321:

“321.1. If an employer fails to make a periodic payment within the prescribed time or makes a payment that is insufficient on its face, the Commission may, in the way it considers appropriate, determine the amount that should have been paid and demand the payment from the employer by means of a notice of assessment.

If the defaulting employer then makes the periodic payment, the employer is still liable for the penalty and any interest accrued due to the delay.

“321.2. An employer who fails to make a periodic payment or notify the Commission if the amount of a payment is equal to zero within the prescribed time incurs a penalty of

- (1) 7% of the amount of the payment, if the delay does not exceed 7 days;
- (2) 11% of the amount of the payment, if the delay does not exceed 14 days; and
- (3) 15% of the amount of the payment in other cases.

The employer also incurs a penalty of \$25 per day for each day of default up to an amount of \$2,500.

“321.3. An employer who makes a periodic payment that is lower than the payment that should have been made must make up the difference and pay a penalty of

- (1) 7% of the difference, if the difference is made up within 7 days after the date on which the payment is payable;
- (2) 11% of the difference, if the difference is made up within 14 days after the date on which the payment is payable; and
- (3) 15% of the difference in other cases.”

17. Section 323.1 of the Act is replaced by the following sections:

“323.1. The Commission may waive all or part of the interest, penalty or charge payable by an employer.

The Commission may also cancel all or part of the interest, penalty or fees payable by an employer.

The chair of the board of directors and chief executive officer of the Commission shall present a statistical summary of such waivers and cancellations to the board of directors within four months after the end of the fiscal year in which the waivers and cancellations are made.

“323.2. If an employer that is a legal person fails to pay an assessment, the employer’s directors in office on the date of the default become solidarily liable with the employer for that assessment as well as any interest accrued and penalties incurred in relation to the assessment

(1) if a writ of execution in respect of the employer is returned unfulfilled in whole or in part after a certificate of default is filed under section 322;

(2) if a winding-up order is made against the employer or the employer becomes bankrupt within the meaning of the Bankruptcy and Insolvency Act (Revised Statutes of Canada, 1985, chapter B-3) and a claim is filed; or

(3) if the employer has instituted proceedings for its winding-up or dissolution, or if it has been dissolved.

“323.3. Section 323.2 does not apply to a director who, in the circumstances, exercised a reasonable degree of care, diligence and skill or could not have been aware of the default described in that section.

“323.4. The Commission shall assess a director described in section 323.2 as if the director were an employer, and this division applies to such an assessment, with the necessary modifications.

“323.5. The Commission may not assess a director for an amount referred to in section 323.2 if the employer is required to pay that amount under section 316.

Furthermore, the Commission may not assess a director for an amount referred to in section 323.2 after the expiry of two years after the date on which the director last ceases to be a director of the employer.”

18. Section 332 of the Act is amended by striking out the second paragraph.

19. Section 334 of the Act is amended by inserting “and the assessment referred to in section 343” after “beneficiaries” in the fourth line of the first paragraph.

20. The Act is amended by inserting the following section after section 334:

“334.1. An employer who is personally liable for the payment of benefits may file with the Commission an irrevocable letter of credit issued by a legal person in favour of the Commission instead of making a contract described in section 334. In the event of default by the employer, the letter of credit must cover the payment of benefits to beneficiaries and of the assessment referred to in section 343 not otherwise covered by a contract made in accordance with section 334. It must also be cashable by the Commission if the employer becomes subject to Chapter IX under section 336 and must be in compliance with the other conditions fixed by the Commission.

Not later than 75 days before the expiry date of the previous letter of credit, an employer who avails himself of the first paragraph must file with the Commission a new letter of credit meeting the requirements of the first paragraph, unless the employer has filed proof of making a contract described in section 334 that is applicable from the expiry date of the first letter of credit and under which a person undertakes to assume the obligations of the employer that are not otherwise covered by another contract made in accordance with that section.

If the legal person issuing the letter of credit is not governed by any of the Acts listed in the second paragraph of section 334, the Commission may require proof that the solvency of that person is in accordance with generally applicable principles in that regard.”

21. Section 336 of the Act is replaced by the following section:

“336. An employer who fails to comply with the obligation prescribed by section 333 is considered never to have been governed by this chapter and is subject to Chapter IX.

The employer may nevertheless become subject to this chapter if the employer files a written application to that effect with the Commission within six months after the date on which the employer’s default under section 333 began. However, the employer remains subject to Chapter IX for any period before the date on which the application is received by the Commission.

An employer who fails to comply with the obligations prescribed by sections 334 and 334.1 ceases to be governed by this chapter and becomes subject to Chapter IX if the employer does not remedy the default within 15 days after the date on which a default notice is served on the employer by the Commission.”

22. Section 342 of the Act is replaced by the following section:

“342. If the Commission believes it necessary to ensure prompt payment of benefits, it may pay a beneficiary the benefits due by an employer who is personally liable for their payment.

The Commission shall claim the amount of benefits paid from the employer by means of a written notice.

For the purposes of payment, the computation of interest, the due date and any contestation, the notice constitutes a notice of assessment.”

23. Section 343 of the Act is amended by replacing the last two paragraphs by the following paragraphs:

“The assessment corresponds to a percentage of the cost of the benefits due by each of the employers. The percentage is determined by the Commission by regulation and may vary according to situations also determined by regulation.

The regulations may prescribe a minimum assessment.”

24. Section 345 of the Act is amended by replacing “and sections 319 and 321” at the end by “, sections 319, 321 to 321.3 and 323.2 to 323.5”.

25. Section 348 of the Act is amended by replacing the second paragraph by the following paragraphs:

“If the Commission accepts an employer’s application under the first paragraph, it may charge to the fund the obligations of the employer relating to industrial accidents having occurred or occupational diseases reported before the change of status, on the remittance, by the employer, the employer’s insurer or the surety or warrantor, of a reserve to pay the benefits for the industrial accidents and occupational diseases as well as the assessment referred to in section 343.

An employer who chooses not to remit such a reserve remains personally liable for the payment of benefits due in relation to industrial accidents having occurred or occupational diseases reported before the change of status, and must make a contract in accordance with section 334 or file with the Commission an irrevocable letter of credit in accordance with section 334.1 to cover, in case of default on the employer’s part, the payment of benefits for the industrial accidents and occupational diseases as well as the assessment referred to in section 343.

An employer who becomes subject to Chapter IX under section 336 or who fails to make a contract or file with the Commission an irrevocable letter of credit in accordance with the third paragraph, the employer’s insurer, or the surety or warrantor must, at the request of the Commission, remit a reserve in the amount established by the Commission so that the obligations of the employer relating to industrial accidents having occurred or occupational diseases reported before the change of status and the assessment referred to in section 343 will be charged to the fund.

For the purposes of payment, the computation of interest, the due date and any contestation, the request referred to in the fourth paragraph constitutes a notice of assessment.”

26. Section 358 of the Act is amended

(1) by adding “, or to refuse to waive or cancel interest, a penalty or fees under section 323.1” at the end of the third paragraph;

(2) by adding the following paragraph after the third paragraph:

“A person may not apply for the review of a provisional rate fixed by the Commission under section 315.2.”

27. Section 454 of the Act is amended

(1) by replacing subparagraph 4.3 of the first paragraph by the following subparagraphs:

“(4.3) prescribing, for the purposes of section 290, the standards applicable to the notice that an employer who begins operating must give to the Commission;

“(4.4) determining, for the purposes of section 291, the other information the employer must declare to the Commission, and prescribing standards applicable to the declaration of gross wages and other information;

“(4.5) determining, for the purposes of section 296, the registers and records an employer must keep and the supporting documents the employer must retain as well as standards relating to the keeping and retention of such registers, records and supporting documents;”;

(2) by striking out “; those rules may vary according to the categories of employers the Commission determines” at the end of subparagraph 5.1 of the first paragraph;

(3) by inserting the following subparagraphs after subparagraph 12.2 of the first paragraph:

“(12.2.1) prescribing, for the purposes of section 315, standards applicable to the payment of the assessment by the employer;

“(12.2.2) prescribing, for the purposes of section 315.1, standards applicable to the periodic payments the employer must make;”;

(4) by striking out “. The conditions may vary according to the categories of employers the Commission determines” at the end of subparagraph 12.4 of the first paragraph;

(5) by striking out “. The conditions may vary according to the categories of employers the Commission determines” at the end of subparagraph 13 of the first paragraph;

(6) by striking out “The standards adopted under this subparagraph may vary according to the categories of employers the Commission determines.” at the end of subparagraph 15 of the first paragraph;

(7) by inserting the following subparagraph after subparagraph 15 of the first paragraph:

“(16) determining, for the purposes of section 343, percentages for fixing the assessment of employers who are personally liable for the payment of benefits, determining the situations to which the percentages apply and providing for any minimum assessment.”;

(8) by inserting the following paragraph after the first paragraph:

“In exercising its regulatory powers under subparagraphs 4.2 to 13, 15 and 16 of the first paragraph, the Commission may prescribe standards that differ according to the categories of employers it determines.”

28. Section 455 of the Act is amended by replacing “5 to 13 and 15” in the second line of the second paragraph by “4.2 to 13, 15 and 16”.

29. The Act is amended by inserting the following sections after section 574:

“574.1. Unless the Commission agrees to charge to the fund the obligations of an employer who is personally liable for the payment of benefits under the Workers’ Compensation Act (chapter A-3), the employer remains liable for the payment of benefits for a recurrence, relapse or aggravation of an injury or disease resulting from an industrial accident suffered or an occupational disease reported by one of the employer’s workers while the employer was personally liable for the payment of benefits.

This section is declaratory. However, it cannot operate to prevent an employer who is personally liable for the payment of benefits under the Workers’ Compensation Act from being declared, under a final judgment of an administrative tribunal or a court of justice, not personally liable for the payment of benefits for a recurrence, relapse or aggravation suffered by one of the employer’s workers, as long as the employer contested a decision of the Commission holding the employer liable for the payment of those benefits before 14 November 2006.

“574.2. The Commission may impose and is deemed to have always had the power to impose on an employer that it considered personally liable for the payment of benefits under the Workers’ Compensation Act (chapter A-3) an assessment to defray the costs incurred under this Act in

relation to a recurrence, a relapse or an aggravation of an injury or disease resulting from an industrial accident suffered or an occupational disease reported by one of the employer's workers while the employer was personally liable for the payment of benefits.

For the purpose of fixing the assessment, the Commission exercises its powers under section 343 of this Act, with the necessary modifications."

WORKERS' COMPENSATION ACT

30. Section 125 of the Workers' Compensation Act (R.S.Q., chapter A-3) is replaced by the following section:

"125. A regulation made by the Commission under section 124 is subject to the approval of the Government with the exception of a regulation made under paragraph *d* of that section."

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

31. A regulatory amendment made before 1 July 2007 by the Commission de la santé et de la sécurité du travail under subparagraph 7, 9 or 12.1 of the first paragraph of section 454 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) to reflect the amendments to that Act that are enacted by this Act concerning the definition of "worker" comes into force on the day of its publication in the *Gazette officielle du Québec* without prior publication and has effect from the assessment year 2007.

32. Sections 323.2, 323.3 and 323.5 of the Act respecting industrial accidents and occupational diseases as enacted by section 17 do not apply to an assessment for a year before the year (*insert the year of coming into force of section 323.2 of the Act respecting industrial accidents and occupational diseases*).

33. An employer who fails to send in the notice required by section 333 of the Act respecting industrial accidents and occupational diseases on or before 1 January 2007 becomes subject to Chapter IX of that Act from that date.

However, the employer may become subject to Chapter X of that Act again if the employer files a written application to that effect with the Commission de la santé et de la sécurité du travail before the expiry of a six-month period beginning on 1 January 2007. The employer remains subject to Chapter IX of that Act for the period extending from 1 January 2007 to the date the application is received by the Commission de la santé et de la sécurité du travail.

The fourth and fifth paragraphs of section 348 of the Act respecting industrial accidents and occupational diseases as enacted by section 25 then apply to that employer.

34. The Commission de la santé et de la sécurité du travail may require employers to provide information necessary for the implementation of a regulation made under subparagraph 12.2.2 of the first paragraph of section 454 of the Act respecting industrial accidents and occupational diseases as enacted by paragraph 3 of section 27.

35. The amendment to the Workers' Compensation Act made by section 30 has effect from 14 November 2006.

36. Despite any judgment to the contrary, the resolutions adopted by the board of directors of the Commission de la santé et de la sécurité du travail under section 343 of the Act respecting industrial accidents and occupational diseases determining the percentages applicable to the determination of the assessment of employers personally liable for the payment of benefits to defray the costs incurred for the administration of Chapter X of that Act may not be invalidated, nor may the notices of assessment issued pursuant to those resolutions, on the ground that the Commission should have proceeded by regulation.

37. Sections 290 to 296, 306, 307, 315, 319, 321, 323.1 and 345 of the Act respecting industrial accidents and occupational diseases as they read on 13 December 2006 continue to apply for the purposes of employers' declarations and the fixing and payment of an assessment for an assessment year before the year (*insert the year of coming into force of section 7*).

38. This Act comes into force on the date or dates set by the Government, except for section 23, paragraphs 2 and 4 to 8 of section 27 and sections 28 to 37, which come into force on 14 December 2006, and sections 1 to 5 and 15, section 17 insofar as it enacts section 323.1 of the Act respecting industrial accidents and occupational diseases, sections 18 to 22, 24 and 25 and paragraph 1 of section 26, which come into force on 1 January 2007.

