NATIONAL ASSEMBLY

SECOND SESSION THIRTY-SIXTH LEGISLATURE

Bill 143

(2002, chapter 80)

An Act to amend the Act respecting labour standards and other legislative provisions

Introduced 7 November 2002
Passage in principle 19 November 2002
Passage 19 December 2002
Assented to 19 December 2002

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EXPLANATORY NOTES

This bill introduces various amendments that concern the standards applicable to employees and employers who are subject to the Act respecting labour standards.

As regards the scope of the Act, the bill provides in particular that the labour standards apply to domestics whether or not they reside with their employer. The labour standards will also apply, subject to the duration of the work, to all farm workers and to persons having custody or taking care of a child or a sick, handicapped or elderly person, unless the work is performed occasionally or solely within the context of assistance to family or community help.

The bill clarifies the powers of the Commission des normes du travail pertaining to the preparation and dissemination of information documents concerning labour standards and the obligations the Commission may impose on employers in that respect.

The bill clarifies the provisions concerning gratuities or tips earned by employees and the rules that apply where a tip-sharing arrangement exists with other employees in the same establishment.

As regards hours of work and rest periods, the bill specifies the situations in which an employee is deemed to be at work, introduces a right to refuse to work over and above a certain number of daily or weekly work hours, and raises the minimum period of weekly rest from 24 to 32 hours.

New rules are introduced to calculate the indemnity paid for general statutory holidays, which will be calculated as a proportion of wages earned in the pay periods preceding the holiday, without regard to an uninterrupted service requirement or to whether or not the holiday is a workday for the employee.

The bill provides that on certain conditions paid annual vacation may be taken early or deferred to the following year.

The bill raises the time for which an employee may be absent for sickness or an accident from 17 to 26 weeks and from 5 to 10 days per year for family obligations. An employee will be entitled to be absent for up to 12 weeks per year if the employee's presence is

required to care for a close relative because of a serious illness or accident and for up to 104 weeks if a minor child of the employee has a serious and potentially mortal illness. Other amendments introduced concern maternity and parental leaves and a new paternity leave. The bill provides that, during an absence owing to sickness or an accident, or a maternity, paternity or parental leave, the group insurance and pension plans recognized in the employee's place of employment are maintained and the employee is to be reinstated in the employee's regular position, and with the same benefits, at the end of the absence or leave.

The bill introduces provisions that pertain to psychological harassment, including an employee's right to work in an environment free from harassment. Provisions are introduced which make it possible for an employee who believes he or she is a victim of harassment to file a complaint with the Commission des normes du travail and, where necessary, to have recourse to the Commission des relations du travail. Special rules are to be applicable where the employee suffers an employment injury from the psychological harassment.

The provisions of the Act respecting manpower vocational training and qualification that concern mass layoffs are transferred to the Act respecting labour standards, with the addition of a remedy available to an employee should the employer fail to respect the time periods for giving layoff notice.

The bill clarifies the rules that apply if the employer requires an employee to wear special clothing or to furnish material, equipment, raw materials or goods.

The bill establishes an employee's right, subject to certain conditions, to retain the status of employee if changes made by the employer to the enterprise do not alter that status, and provides for the filing of a complaint with the Commission des normes du travail in the event of a disagreement and, where necessary, for recourse to the Commission des relations du travail.

Various amendments are made by the bill to provisions concerning remedies, in particular to reduce the period of uninterrupted service required before an employee can file a complaint for dismissal without just and sufficient cause.

Lastly, the bill repeals the provisions relating to bankruptcy and contains various provisions of a technical nature and consequential amendments.

LEGISLATION AMENDED BY THIS BILL :

– Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) ;

– Labour Code (R.S.Q., chapter C-27) ;

– National Holiday Act (R.S.Q., chapter F-1.1) ;

– Act respecting manpower vocational training and qualification (R.S.Q., chapter F-5) ;

– Act respecting the Ministère de l'Emploi et de la Solidarité sociale and establishing the Commission des partenaires du marché du travail (R.S.Q., chapter M-15.001) ;

– Act respecting the Ministère du Travail (R.S.Q., chapter M-32.2) ;

– Act respecting labour standards (R.S.Q., chapter N-1.1).

Bill 143

AN ACT TO AMEND THE ACT RESPECTING LABOUR STANDARDS AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 2 of the Act respecting labour standards (R.S.Q., chapter N-1.1) is amended by striking out ", provided that, under the law of his place of work, he is not entitled to a minimum wage" in subparagraph 2 of the first paragraph.

2. Section 3 of the said Act is amended

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

"(2) to an employee whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person, in that person's dwelling, including, where so required, the performance of domestic duties that are directly related to the immediate needs of that person, if the employee's duty is performed on an occasional basis, unless the work serves to procure profit to the employer, or if the employee's duty is performed solely within the context of assistance to family or community help;";

(2) by replacing "81.1 to 81.17" in the third line of paragraph 3 by "79.7, 79.8, 81.1 to 81.20";

(3) by replacing "I and II" in the last line of paragraph 3 by "I, II and II.1";

(4) by replacing "81.1 to 81.17" in the second line of paragraph 6 by "79.7, 79.8, 81.1 to 81.20";

(5) by replacing "I and II" in the fourth line of paragraph 6 by "I, II and II.1".

3. Section 3.1 of the said Act is replaced by the following section:

"**3.1.** Notwithstanding section 3, Divisions V.2 and VI.1 of Chapter IV, sections 122.1 and 123.1 and Division II.1 of Chapter V apply to all employees and to all employers."

4. Section 5 of the said Act is amended

(1) by inserting the following paragraph after paragraph 1:

"(1.1) inform employees and employers of their rights and obligations under this Act;";

(2) by striking out paragraph 4.

5. Section 29 of the said Act is amended by striking out paragraph 4.

6. Section 39 of the said Act is amended

(1) by striking out paragraph 7;

(2) by adding the following paragraphs after paragraph 12:

"(13) prepare and disseminate information documents on labour standards and make the documents available to any interested person or body, in particular employers and employees;

"(14) require an employer to transmit to employees any information document concerning labour standards furnished to the employer by the Commission and to post the document in a prominent place easily accessible to all employees or to disseminate the contents of the document;

"(15) where it considers it necessary, indicate to the employer the manner in which the employer is required to transmit, post or disseminate an information document it furnishes to the employer."

7. Section 39.0.1 of the said Act is amended

(1) by replacing paragraph 3 of the definition of "employer subject to contribution" by the following paragraph:

"(3) public transit authorities mentioned in section 1 of the Act respecting public transit authorities (2001, chapter 23), amended by section 1 of chapter 66 of the statutes of 2001;";

(2) by inserting the following paragraph after paragraph 2 of the definition of "remuneration subject to contribution":

"(2.1) remuneration paid to an employee whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person, in that person's dwelling, including, where so required, the performance of domestic duties that are directly related to the immediate needs of that person, unless the work serves to procure profit to the employer;".

8. Section 39.1 of the said Act is repealed.

9. Section 40 of the said Act is amended by adding the following paragraph at the end:

"An employee is entitled to be paid a wage that is at least equivalent to the minimum wage."

10. Section 49 of the said Act is amended

(1) by striking out ", or unless he is authorized to do so in writing by the employee" at the end of the first paragraph;

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

"The employer may make deductions from wages if the employee consents thereto in writing, for a specific purpose mentioned in the writing."

11. Section 50 of the said Act is amended by replacing the first and second paragraphs by the following paragraphs:

"**50.** Any gratuity or tip paid directly or indirectly by a patron to an employee who provided the service belongs to the employee of right and must not be mingled with the wages that are otherwise due to the employee. The employer must pay at least the prescribed minimum wage to the employee without taking into account any gratuities or tips the employee receives.

Any gratuity or tip collected by the employer shall be remitted in full to the employee who rendered the service. The words gratuity and tip include service charges added to the patron's bill but do not include any administrative costs added to the bill.

The employer may not impose an arrangement to share gratuities or a tip-sharing arrangement. Nor may the employer intervene, in any manner whatsoever, in the establishment of an arrangement to share gratuities or a tip-sharing arrangement. Such an arrangement must result solely from the free and voluntary consent of the employees entitled to gratuities or tips."

12. Section 50.1 of the said Act is amended by striking out "over and above the proportion of such costs that is attributable to tips".

13. Section 52 of the said Act is amended

(1) by replacing "44" in the first paragraph by "40";

(2) by striking out the second paragraph.

14. Section 54 of the said Act is amended

(1) by inserting ", as regards the computing of overtime hours for the purpose of the increase in the usual hourly wage," after "does not apply" in the portion before subparagraph 1 of the first paragraph;

(2) by striking out "harvesting," in subparagraph 5 of the first paragraph;

(3) by striking out subparagraph 8 of the first paragraph;

(4) by adding the following subparagraph after subparagraph 8 of the first paragraph:

"(9) an employee whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person, in that person's dwelling, including, where so required, the performance of domestic duties that are directly related to the immediate needs of that person, unless the work serves to procure profit to the employer.";

(5) by replacing "and 5 to 8" in the third line of the second paragraph by ", 5 to 7 and 9".

15. Section 57 of the said Act is replaced by the following section:

"**57.** An employee is deemed to be at work

(1) while available to the employer at the place of employment and required to wait for work to be assigned;

(2) subject to section 79, during the break periods granted by the employer;

(3) when travel is required by the employer;

(4) during any trial period or training required by the employer."

16. Section 59 of the said Act is repealed.

17. The said Act is amended by inserting the following section after section 59:

"**59.0.1.** An employee may refuse to work

(1) more than four hours after regular daily working hours or more than fourteen working hours per twenty-four hour period, whichever period is the shortest or, for an employee whose daily working hours are flexible or non-continuous, more than twelve working hours per twenty-four hour period;

(2) subject to section 53, more than fifty working hours per week or, for an employee working in an isolated area or carrying out work in the James Bay territory, more than sixty working hours per week.

This section does not apply where there is a danger to the life, health or safety of employees or the population, where there is a risk of destruction or serious deterioration of movable or immovable property or in any other case of superior force, or if the refusal is inconsistent with the employee's professional code of ethics."

18. Section 59.1 of the said Act is amended by adding the following paragraph at the end:

"However, notwithstanding any provision contrary to the collective agreement or decree, the indemnity for a non-working day with pay shall be computed, in the case of an employee referred to in section 42.11 or 1019.4 of the Taxation Act (chapter I-3), on the basis of the wages increased by the tips attributed under that section 42.11 or reported under that section 1019.4."

19. Section 60 of the said Act is amended by replacing paragraph 2 by the following paragraph:

"(2) Good Friday or Easter Monday, at the option of the employer;".

20. Section 62 of the said Act is replaced by the following section:

"**62.** For each statutory general holiday, the employer must pay the employee an indemnity equal to 1/20 of the wages earned during the four complete weeks of pay preceding the week of the holiday, excluding overtime. However, the indemnity paid to an employee remunerated in whole or in part on a commission basis must be equal to 1/60 of the wages earned during the twelve complete weeks of pay preceding the week of the holiday."

21. Section 65 of the said Act is replaced by the following section:

"**65.** To benefit from a statutory general holiday, an employee must not have been absent from work without the employer's authorization or without valid cause on the working day preceding or on the working day following the holiday."

22. Section 70 of the said Act is amended by inserting the following paragraphs after the first paragraph:

"Notwithstanding the first paragraph, the employer may, at the request of the employee, allow the annual leave to be taken, in whole or in part, during the reference year.

In addition, if at the end of the twelve months following the end of a reference year, the employee is absent owing to sickness or accident or is absent or on leave for family or parental matters, the employer may, at the request of the employee, defer the annual leave to the following year. If the annual leave is not so deferred, the employer must pay the indemnity for the annual leave to which the employee is entitled."

23. Section 74 of the said Act is amended

(1) by inserting "or paternity" after "maternity" in the first line of the second paragraph;

(2) by replacing "maternity leave" in the third paragraph by "maternity or paternity leave".

24. Section 75 of the said Act is amended by adding the following paragraph at the end:

"However, in the case of a farm worker hired on a daily basis, the indemnity may be added to his wages and be paid in the same manner."

25. Section 77 of the said Act is amended

(1) by striking out subparagraph 6 of the first paragraph;

(2) by replacing "subparagraphs 2 and 6" in the second paragraph by "subparagraph 2".

26. Section 78 of the said Act is amended

(1) by replacing "twenty-four" in the first paragraph by "32";

(2) by adding "if the employee consents thereto" at the end of the second paragraph.

27. The said Act is amended by inserting the following division after section 79:

"DIVISION V.0.1

"ABSENCES OWING TO SICKNESS OR ACCIDENT

"**79.1.** An employee who is credited with three months of uninterrupted service may be absent from work, without pay, for a period of not more than 26 weeks over a period of 12 months, owing to sickness or accident.

However, this section does not apply in the case of an employment injury within the meaning of the Act respecting industrial accidents and occupational diseases (chapter A-3.001).

"**79.2.** An employee must advise the employer as soon as possible of an absence from work and give the reasons therefor.

"**79.3.** An employee's participation in the group insurance and pension plans recognized in the employee's place of employment shall not be affected by the absence from work, subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer.

The Government shall determine, by regulation, the other advantages available to an employee during an absence owing to sickness or accident.

"**79.4.** At the end of the absence owing to sickness or accident, the employer shall reinstate the employee in the employee's former position with the same benefits, including the wages to which the employee would have been entitled had the employee remained at work. If the position held by the employee no longer exists when the employee returns to work, the employer shall recognize all the rights and privileges to which the employee would have been entitled if the employee had been at work at the time the position ceased to exist.

Nothing in the first paragraph shall prevent an employer from dismissing, suspending or transferring an employee if, in the circumstances, the consequences of the sickness or accident or the repetitive nature of the absences constitute good and sufficient cause.

"**79.5.** If the employer makes dismissals or layoffs that would have included the employee had the employee remained at work, the employee retains the same rights with respect to a return to work as the employees who were dismissed or laid off.

"**79.6.** This division shall not grant to an employee any benefit to which the employee would not have been entitled if the employee had remained at work."

28. The said Act is amended by replacing the heading of Division V.1 of Chapter IV by the following heading:

"FAMILY OR PARENTAL LEAVE AND ABSENCES".

29. The said Act is amended by inserting the following sections after the heading of Division V.1 of Chapter IV:

"**79.7.** An employee may be absent from work, without pay, for 10 days per year to fulfil obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of the employee's spouse, father, mother, brother, sister or one of the employee's grandparents.

The leave may be divided into days. A day may also be divided if the employer consents thereto.

The employee must advise the employer of his absence as soon as possible and take the reasonable steps within his power to limit the leave and the duration of the leave.

"**79.8.** An employee who is credited with three months of uninterrupted service may be absent from work, without pay, for a period of not more than 12 weeks over a period of 12 months where he must stay with his child, spouse, the child of his spouse, his father, mother, brother, sister or one of his grandparents because of a serious illness or a serious accident.

An employee must advise the employer as soon as possible of an absence from work and, at the employer's request, furnish a document justifying the absence.

However, if a minor child of the employee has a serious and potentially mortal illness, attested by a medical certificate, the employee is entitled to an extension of the absence, which shall end at the latest 104 weeks after the beginning thereof.

The first paragraph of section 79.3, the first paragraph of section 79.4 and sections 79.5 and 79.6 apply, with the necessary modifications, to the employee's absence."

30. Section 80 of the said Act is amended by replacing "three" by "four".

31. Section 81.1 of the said Act is amended

(1) by replacing "or the adoption of a child" in the first paragraph by ", the adoption of a child or where there is a termination of pregnancy in or after the twentieth week of pregnancy";

(2) by adding "or after the termination of pregnancy" at the end of the second paragraph.

32. Section 81.2 of the said Act is replaced by the following section:

"**81.2.** An employee is entitled to a paternity leave of not more than five consecutive weeks, without pay, on the birth of his child.

The paternity leave shall not begin before the week of the birth of the child and shall not end later than 52 weeks after the week of the birth."

33. Section 81.4 of the said Act is replaced by the following section:

"**81.4.** A pregnant employee is entitled to a maternity leave without pay of not more than 18 consecutive weeks unless, at her request, the employer consents to a longer maternity leave.

The employee may spread the maternity leave as she wishes before or after the expected date of delivery. However, where the maternity leave begins on the week of delivery, that week shall not be taken into account in calculating the maximum period of 18 consecutive weeks."

34. The said Act is amended by inserting the following section after section 81.4:

"**81.4.1.** If the delivery takes place after the expected date, the employee is entitled to at least two weeks of maternity leave after the delivery."

35. Section 81.5 of the said Act is replaced by the following section:

"**81.5.** The maternity leave shall not begin before the sixteenth week preceding the expected date of delivery and shall not end later than 18 weeks after the week of delivery.

Where the child is hospitalized during the maternity leave, the leave may be suspended, following an agreement with the employer, during the hospitalization.

In addition, an employee who sends to the employer, before the expiry date of her maternity leave, a notice accompanied with a medical certificate attesting that the state of health of the employee or of her child requires it, is entitled to an extension of the maternity leave for the duration indicated in the medical certificate."

36. The said Act is amended by inserting the following sections after section 81.5:

"**81.5.1.** Where there is a risk of termination of pregnancy or a risk to the health of the mother or the unborn child, caused by the pregnancy and requiring a work stoppage, the employee is entitled to a special maternity leave, without pay, for the duration indicated in the medical certificate attesting the existing risk and indicating the expected date of delivery.

The leave is, where applicable, deemed to be the maternity leave provided for in section 81.4 from the beginning of the fourth week preceding the expected date of delivery.

"**81.5.2.** Where there is termination of pregnancy before the beginning of the twentieth week preceding the expected date of delivery, the employee is entitled to a special maternity leave, without pay, for a period of no longer than three weeks, unless a medical certificate attests that the employee needs an extended leave.

If the termination of pregnancy occurs in or after the twentieth week, the employee is entitled to a maternity leave without pay of a maximum duration of 18 consecutive weeks beginning from the week of the event.

"**81.5.3.** In the case of a termination of pregnancy or a premature birth, the employee must, as soon as possible, give written notice to the employer informing the employer of the event and the expected date of her return to work, accompanied with a medical certificate attesting to the event."

37. Section 81.7 of the said Act is repealed.

38. Section 81.9 of the said Act is amended by replacing "The employer" by "Notwithstanding the notice provided for in section 81.6, the employee

may return to work before the expiry of her maternity leave. However, the employer".

39. Section 81.10 of the said Act is amended by replacing "a child who has not reached the age of compulsory school attendance" in the first paragraph by "a minor child".

40. Section 81.11 of the said Act is amended

(1) by replacing "the day" wherever those words appear by "the week";

(2) by adding the following paragraph:

"However, in the cases and subject to the conditions prescribed by regulation of the Government, parental leave may end at the latest 104 weeks after the birth or, in the case of adoption, 104 weeks after the child was entrusted to the employee."

41. Section 81.12 of the said Act is amended by replacing ", except in the cases and on the conditions provided for by government regulation." by ". However, the notice may be shorter if the employee must stay with the newborn child or newly adopted child, or with the mother, because of the state of health of the child or of the mother."

42. Section 81.13 of the said Act is amended

(1) by striking out "or pursuant to a regulation made under section 81.7";

(2) by adding the following paragraph:

"If the employer consents thereto, the employee may return to work on a part-time basis or intermittently during the parental leave."

43. Section 81.14 of the said Act is amended by replacing "Subject to a regulation made under section 81.7, an" by "An".

44. Section 81.15 of the said Act is replaced by the following sections:

"**81.15.** An employee's participation in the group insurance and pension plans recognized in the employee's place of employment shall not be affected by the absence from work, subject to regular payment of the contributions payable under those plans, the usual part of which is paid by the employer.

The Government shall determine, by regulation, the other advantages available to an employee during maternity, paternity or parental leave.

"**81.15.1.** At the end of a maternity, paternity or parental leave, the employer shall reinstate the employee in the employee's former position with

the same benefits, including the wages to which the employee would have been entitled had the employee remained at work.

If the position held by the employee no longer exists when the employee returns to work, the employer shall recognize all the rights and privileges to which the employee would have been entitled if the employee had been at work at the time the position ceased to exist."

45. Section 81.16 of the said Act is repealed.

46. Section 81.17 of the said Act is replaced by the following section:

"**81.17.** Sections 79.5 and 79.6 apply to a maternity, paternity or parental leave, with the necessary modifications."

47. The said Act is amended by inserting the following division after section 81.17:

"DIVISION V.2

"PSYCHOLOGICAL HARASSMENT

"**81.18.** For the purposes of this Act, "psychological harassment" means any vexatious behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects an employee's dignity or psychological or physical integrity and that results in a harmful work environment for the employee.

A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

"**81.19.** Every employee has a right to a work environment free from psychological harassment.

Employers must take reasonable action to prevent psychological harassment and, whenever they become aware of such behaviour, to put a stop to it.

"**81.20.** The provisions of sections 81.18, 81.19, 123.7, 123.15 and 123.16, with the necessary modifications, are deemed to be an integral part of every collective agreement. An employee covered by such an agreement must exercise the recourses provided for in the agreement, insofar as any such recourse is available to employees under the agreement.

At any time before the case is taken under advisement, a joint application may be made by the parties to such an agreement to the Minister for the appointment of a person to act as a mediator.

The provisions referred to in the first paragraph are deemed to form part of the conditions of employment of every employee appointed under the Public

Service Act (chapter F-3.1.1) who is not governed by a collective agreement. Such an employee must exercise the applicable recourse before the Commission de la fonction publique according to the rules of procedure established pursuant to that Act. The Commission de la fonction publique exercises for that purpose the powers provided for in sections 123.15 and 123.16 of this Act.

The third paragraph also applies to the members and officers of bodies."

48. Section 83 of the said Act is amended by replacing "mainly" in the first line of the third paragraph by "in whole or in part".

49. The said Act is amended by inserting the following division after section 84:

"DIVISION VI.0.1

"NOTICE OF COLLECTIVE DISMISSAL

"**84.0.1.** The termination of employment by the employer, including a layoff for a period of six months or more, involving not fewer than 10 employees of the same establishment in the course of two consecutive months constitutes a collective dismissal governed by this division.

"**84.0.2.** The following employees are not considered to be employees affected by a collective dismissal:

(1) an employee who has less than three months of uninterrupted service;

(2) an employee whose contract for a fixed term or for a specific undertaking expires;

(3) an employee to whom section 83 of the Public Service Act (chapter F-3.1.1) applies;

(4) an employee who has committed a serious fault;

(5) an employee referred to in section 3.

"**84.0.3.** This division does not apply

(1) to the layoff of employees for an indeterminate period, but in fact less than six months;

(2) in respect of an establishment whose activities are seasonal or intermittent;

(3) in respect of an establishment affected by a strike or lock-out within the meaning of the Labour Code (chapter C-27).

"**84.0.4.** Every employer shall, before making a collective dismissal for technological or economic reasons, give notice to the Minister of Employment and Social Solidarity within the following minimum periods:

(1) 8 weeks, where the number of employees affected by the dismissal is at least equal to 10 and less than 100;

(2) 12 weeks, where the number of employees affected by the dismissal is at least equal to 100 and less than 300;

(3) 16 weeks, where the number of employees affected by the dismissal is at least equal to 300.

An employer that gives the notice referred to in the first paragraph is not exempted from giving the notice required by section 82.

"**84.0.5.** In the case of a superior force or where an unforeseeable event prevents an employer from respecting the time periods for giving notice set out in section 84.0.4, the employer shall give the Minister a notice of collective dismissal as soon as the employer is in a position to do so.

"**84.0.6.** An employer must transmit a copy of the notice of collective dismissal to the Commission and the certified association representing the employees affected by the dismissal. The employer must post the notice in a conspicuous and readily accessible place in the establishment concerned.

"**84.0.7.** The notice of collective dismissal must be transmitted to the Minister at the place determined by regulation and contain the prescribed information.

"**84.0.8.** During the time period set out in section 84.0.4, an employer may not change the wages of an employee affected by the collective dismissal or, where applicable, the group insurance and pension plans recognized in the employee's place of employment without the written consent of that employee or the certified association representing the employee.

"**84.0.9.** At the request of the Minister, the employer and the certified association or, in the absence of such an association, the representatives chosen by the employees affected by the collective dismissal, must, without delay, participate in the establishment of a reclassification assistance committee and collaborate in carrying out the committee's mission.

The committee shall consist of an equal number of representatives of each party or of the number of representatives agreed on by the parties. Each party has one vote only.

"**84.0.10.** The mission of the reclassification assistance committee is to provide the employees affected by the collective dismissal with any form of

assistance agreed on by the parties to minimize the impact of the dismissal and facilitate the maintenance or re-entry on the labour market of those employees.

The committee is responsible, in particular, for evaluating the situation and needs of the employees affected by the dismissal, developing a reclassification plan to facilitate the maintenance or re-entry on the labour market of those employees and seeing to the implementation of the plan.

"**84.0.11.** The financial contribution of the employer to the operating costs of the reclassification assistance committee and to the reclassification activities shall be agreed on by the employer and the Minister.

Failing an agreement, the financial contribution of the employer shall be an amount determined by regulation of the Government, per employee affected by the collective dismissal.

If the employer fails to make the financial contribution, it may be claimed by the Minister before the competent court.

"**84.0.12.** On request, the Minister may, on the conditions the Minister determines, after giving the interested parties an opportunity to present observations, exempt an employer from the application of all or part of the provisions of sections 84.0.9 to 84.0.11, if the employer, in the establishment concerned by the collective dismissal, offers reclassification assistance measures to the employees affected by the dismissal that are equivalent or surpass the measures provided for in this division.

"**84.0.13.** An employer who does not give the notice prescribed by section 84.0.4 or who gives insufficient notice must pay to each dismissed employee an indemnity equal to the employee's regular wages, excluding overtime, for a period equal to the time period or remainder of the time period within which the employer was required to give notice.

The indemnity must be paid at the time of the dismissal or at the end of a period of six months after a layoff of indeterminate length or a layoff expected to last less than six months but which exceeds that period.

An employer who is in one of the situations described in section 84.0.5 is, however, not required to pay an indemnity.

"**84.0.14.** No employee may cumulate the indemnities provided for in sections 83 and 84.0.13. However, an employee shall receive the greater of the indemnities to which the employee is entitled.

"**84.0.15.** Sections 84.0.9 to 84.0.12 do not apply where the number of employees affected by the dismissal is less than 50."

50. Section 85 of the said Act is replaced by the following section:

"**85.** An employer that requires the wearing of special clothing must supply it free of charge to an employee who is paid the minimum wage. In the case of an employee referred to in section 42.11 or 1019.4 of the Taxation Act (chapter I-3), the minimum wage is computed on the basis of the wages increased by the tips attributed under that section 42.11 or reported under that section 1019.4, and must at least be equivalent to the minimum wage that does not apply to a particular class of employees.

The employer cannot require an amount of money from an employee for the purchase, use or upkeep of special clothing if that would cause the employee to receive less than the minimum wage. In the case of an employee referred to in section 42.11 or 1019.4 of the Taxation Act, the minimum wage is computed on the basis of the wages increased by the tips attributed under that section 42.11 or reported under that section 1019.4, and the amount of money required from the employer cannot be such that the employee receives less than the minimum wage that does not apply to a particular class of employees.

The employer cannot require an employee to pay for special clothing that identifies the employee as an employee of the employer's establishment. In addition, the employer cannot require an employee to purchase clothing or accessories that are items in the employer's trade."

51. The said Act is amended by inserting the following sections after section 85:

"**85.1.** Where an employer requires the use of material, equipment, raw materials or merchandise in the performance of a contract, the employer must furnish them free of charge to an employee who is paid the minimum wage.

The employer cannot require an amount of money from an employee for the purchase, use or maintenance of material, equipment, raw materials or merchandise if the payment would cause the employee to receive less than the minimum wage.

The employer cannot require an amount of money from an employee to pay for expenses related to the operations and mandatory employment-related costs of the enterprise.

"**85.2.** An employer is required to reimburse an employee for reasonable expenses incurred where, at the request of the employer, the employee must travel or undergo training."

52. Section 86 of the said Act is repealed.

53. The said Act is amended by inserting the following section after section 86:

"**86.1.** An employee is entitled to retain the status of employee where the changes made by the employer to the mode of operation of the enterprise do not change that status into that of a contractor without employee status.

Where the employee is in disagreement with the employer regarding the consequences of the changes on the status of the employee, the employee may file a complaint in writing with the Commission des normes du travail. On receipt of the complaint, the Commission shall make an inquiry and the first paragraph of section 102 and sections 103, 104 and 106 to 110 shall apply, with the necessary modifications.

If the Commission refuses to take action following a complaint, the employee may, within 30 days of the Commission's decision under section 107 or 107.1, make a written request to the Commission for the referral of the complaint to the Commission des relations du travail.

At the end of the inquiry, if the Commission agrees to take action, it shall refer the complaint without delay to the Commission des relations du travail for it to rule on the consequences of the changes on the status of the employee.

The Commission des relations du travail shall render its decision within 60 days of the filing of the complaint at its offices."

54. Section 87 of the said Act is replaced by the following section:

"**87.** The employer must transmit to the employee any information document concerning labour standards furnished by the Commission.

The employer must also, at the request of the Commission and according to its directions, transmit to the employee, post or disseminate any document the Commission furnishes to the employer concerning labour standards."

55. Section 87.1 of the said Act is amended by inserting "V.1," after "I to" in the first paragraph.

56. Section 88 of the said Act is amended

(1) by striking out "farm workers," in the fourth and fifth lines of the first paragraph;

(2) by replacing "employees who habitually receive gratuities" in the sixth line of the first paragraph by "employees who receive gratuities or tips";

(3) by striking out "domestics," in the ninth line of the first paragraph;

(4) by striking out the second paragraph;

(5) by replacing "in the first and second paragraphs" in the third paragraph by "in the first paragraph".

57. Section 89 of the said Act is amended

(1) by striking out subparagraph *a* of paragraph 4;

(2) by replacing "and 5 to 8" in subparagraph *i* of paragraph 4 by ", 6 and 7";

(3) by replacing paragraph 6 by the following paragraphs:

"(6) the other benefits an employee may receive during an absence owing to sickness or accident, a maternity, paternity or parental leave, which may vary according to the nature of the leave or, where applicable, its length;

"(6.1) the cases in which and conditions on which a parental leave may terminate at the latest 104 weeks after the birth or, in the case of adoption, 104 weeks after the child was entrusted to the employee;

"(6.2) the procedure for transmission of the notice of collective dismissal and the information it must contain;

"(6.3) the amount of the employer's financial contribution to the operating costs of the reclassification assistance committee and to the reclassification activities;";

(4) by striking out paragraphs 7 and 8.

58. Section 90 of the said Act is amended by striking out the second paragraph.

59. Section 96 of the said Act is amended by striking out "otherwise than by judicial sale".

60. Section 99 of the said Act is amended by replacing "declared and allocated under sections 42.2 and 42.3" by "or tips declared and attributed under sections 42.11 and 1019.4".

61. Section 122 of the said Act is amended

(1) by inserting the following subparagraph after subparagraph 1 of the first paragraph:

"(1.1) on the ground that an inquiry is being conducted by the Commission in an establishment of the employer;";

(2) by replacing "his minor child" in subparagraph 6 of the first paragraph by "the employee's child or the child of the employee's spouse, or because of the state of health of the employee's spouse, father, mother, brother, sister or one of the employee's grandparents";

(3) by replacing "all" after "taken" in subparagraph 6 of the first paragraph by "the".

62. Section 122.1 of the said Act is amended by inserting ", practice discrimination or take reprisals against him" after "an employee" in the first line.

63. Section 122.2 of the said Act is repealed.

64. Section 123 of the said Act, amended by section 140 of chapter 26 of the statutes of 2001, is replaced by the following section:

"**123.** An employee who believes he has been the victim of a practice prohibited by section 122 and who wishes to assert his rights must do so before the Commission des normes du travail within 45 days of the occurrence of the practice complained of.

If the complaint is filed within that time to the Commission des relations du travail, failure to file the complaint with the Commission des normes du travail cannot be invoked against the complainant."

65. Section 123.1 of the said Act, amended by section 141 of chapter 26 of the statutes of 2001, is again amended by replacing "a complaint with the Commission des relations du travail" in the second paragraph by "such a complaint".

66. Section 123.2 of the said Act is amended

(1) by replacing "first paragraph of section 123" in the first and second lines by "second paragraph of section 123.4";

(2) by inserting "or paternity" after "maternity" in the third line.

67. The said Act is amended by inserting the following sections after section 123.3:

"**123.4.** If no settlement is reached following receipt of the complaint by the Commission des normes du travail, the Commission des normes du travail shall, without delay, refer the complaint to the Commission des relations du travail.

The provisions of the Labour Code (chapter C-27) applicable to a remedy relating to the exercise by an employee of a right arising out of that Code apply, with the necessary modifications.

The Commission des relations du travail may not, however, order the reinstatement of a domestic or person whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person, in the employer's dwelling.

"**123.5.** The Commission may, in any proceeding relating to this division, represent an employee who is not a member of a group of employees covered by a certification pursuant to the Labour Code (chapter C-27)."

68. The said Act is amended by inserting the following division after section 123.5 :

"DIVISION II.1

"RECOURSE AGAINST PSYCHOLOGICAL HARASSMENT

"**123.6.** An employee who believes he has been the victim of psychological harassment may file a complaint in writing with the Commission. Such a complaint may also be filed by a non-profit organization dedicated to the defence of employees' rights on behalf of one or more employees who consent thereto in writing.

"**123.7.** Any complaint concerning psychological harassment must be filed within 90 days of the last incidence of the offending behaviour.

"**123.8.** On receipt of a complaint, the Commission shall make an inquiry with due dispatch.

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

"**123.9.** If the Commission refuses to take action following a complaint, the employee or, if applicable, the organization with the employee's written consent, may within 30 days of the Commission's decision under section 107 or 107.1, make a written request to the Commission for the referral of the complaint to the Commission des relations du travail.

"**123.10.** The Commission may, at any time, during the inquiry and with the agreement of the parties, request the Minister to appoint a person to act as a mediator. The Commission may, at the request of the employee, assist and advise the employee during mediation.

"**123.11.** If the employee is still bound to the employer by a contract of employment, the employee is deemed to be at work during mediation sessions.

"**123.12.** At the end of the inquiry, if no settlement is reached between the parties and the Commission agrees to pursue the complaint, it shall refer the complaint without delay to the Commission des relations du travail.

"**123.13.** The Commission des normes du travail may represent an employee in a proceeding under this division before the Commission des relations du travail.

"**123.14.** The provisions of the Labour Code (chapter C-27) relating to the Commission des relations du travail, its commissioners, their decisions and the exercise of their jurisdiction, except sections 15 to 19, as well as section 100.12 of that Code apply, with the necessary modifications.

"**123.15.** If the Commission des relations du travail considers that the employee has been the victim of psychological harassment and that the employer has failed to fulfil the obligations imposed on employers under section 81.19, it may render any decision it believes fair and reasonable, taking into account all the circumstances of the matter, including

(1) ordering the employer to reinstate the employee;

(2) ordering the employer to pay the employee an indemnity up to a maximum equivalent to wages lost;

(3) ordering the employer to take reasonable action to put a stop to the harassment;

(4) ordering the employer to pay punitive and moral damages to the employee;

(5) ordering the employer to pay the employee an indemnity for loss of employment;

(6) ordering the employer to pay for the psychological support needed by the employee for a reasonable period of time determined by the Commission;

(7) ordering the modification of the disciplinary record of the employee.

"**123.16.** Paragraphs 2, 4 and 6 of section 123.15 do not apply to a period during which the employee is suffering from an employment injury within the meaning of the Act respecting industrial accidents and occupational diseases (chapter A-3.001) that results from psychological harassment.

Where the Commission des relations du travail considers it probable that, pursuant to section 123.15, the psychological harassment entailed an employment injury for the employee, it shall reserve its decision with regard to paragraphs 2, 4 and 6."

69. Section 124 of the said Act, amended by section 142 of chapter 26 of the statutes of 2001, is again amended by replacing "three" in the first paragraph by "two".

70. Section 126 of the said Act, replaced by section 144 of chapter 26 of the statutes of 2001, is again replaced by the following section:

"**126.** If no settlement is reached following receipt of the complaint by the Commission des normes du travail, the Commission des normes du travail

shall, without delay, refer the complaint to the Commission des relations du travail."

71. Section 128 of the said Act, amended by section 147 of chapter 26 of the statutes of 2001, is again amended

(1) by inserting "or a person whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person" after "domestic" in the first line of the second paragraph;

(2) by striking out "up to a maximum period of three months" at the end of the second paragraph.

72. Chapter VI of the said Act, comprising sections 136 to 138, is repealed.

73. The said Act is amended by inserting the following section after section 141:

"**141.1.** Every employer who does not give the notice required by section 84.0.4, or who gives insufficient notice, is guilty of an offence and is liable to a fine of $1,500 for each week or part of a week of failure to comply or late compliance.

The fines collected pursuant to the first paragraph shall be paid into the labour market development fund established under section 58 of the Act respecting the Ministère de l'Emploi et de la Solidarité sociale and establishing the Commission des partenaires du marché du travail (chapter M-15.001)."

74. The said Act is amended by inserting the following section after section 158.2:

"**158.3.** Subject to paragraph 2 of section 3 and unless the work serves to procure profit to the employer, the provisions of this Act, in respect of an employee whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person, in that person's dwelling, including, where so required, the performance of domestic duties that are directly related to the immediate needs of that person, apply from 1 June 2004.

Notwithstanding the first paragraph, the Government may, before 1 June 2004, fix by regulation the minimum wage payable to that employee, which may vary according to the situation of the employee or of the employer, or according to the nature of the care. The regulation may also, where applicable, provide for a gradual increase of that minimum wage, which must attain the minimum wage payable to the other employees to whom this Act applies not later than 30 June 2006.

The Government may also, by regulation, prescribe rules that apply to payment to that employee of indemnities relating to statutory general holidays with pay and annual leave."

75. Section 170 of the said Act is amended by adding "and sections 84.0.1 to 84.0.7 and 84.0.9 to 84.0.12, which are under the administration of the Minister of Employment and Social Solidarity" at the end.

AMENDING PROVISIONS

ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

76. The Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) is amended by inserting the following section after section 144 :

"**144.1.** The Commission shall deduct from the income replacement indemnity to which the worker is entitled under this Act the amount received in accordance with an order under paragraph 2 of the first paragraph of section 123.15 of the Act respecting labour standards (chapter N-1.1) for the same period as that covered by the income replacement indemnity. The Commission shall remit the amount thus deducted to the employer who paid it.

The Commission shall also reimburse to the employer the amount paid by the employer in accordance with an order under paragraph 6 of the first paragraph of section 123.15 of that Act, up to the expenses to which the employee is entitled under this Act.

This section also applies where an order disposing of the same matters as the matter referred to in the first or second paragraph has been made pursuant to a collective agreement."

LABOUR CODE

77. Section 47.3 of the Labour Code (R.S.Q., chapter C-27), introduced by section 34 of chapter 26 of the statutes of 2001, is amended by replacing "believes, after being dismissed or the subject of a disciplinary sanction," in the first and second lines by "who has been dismissed or the subject of a disciplinary sanction or who believes he has been the victim of psychological harassment under sections 81.18 to 81.20 of the Act respecting labour standards (chapter N-1.1), believes".

78. Schedule I to the said Code, enacted by section 70 of chapter 26 of the statutes of 2001, is amended by replacing paragraph 15 by the following paragraph :

"(15) sections 86.1, 123.4, 123.9, 123.12 and 126 of the Act respecting labour standards ;".

NATIONAL HOLIDAY ACT

79. Section 4 of the National Holiday Act (R.S.Q., chapter F-1.1) is amended

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

"**4.** The employer must pay to the employee an indemnity equal to 1/20 of the wages earned during the four complete weeks of pay preceding the week of 24 June, excluding overtime. However, the indemnity paid to an employee remunerated in whole or in part by commission must be equal to 1/60 of the wages earned during the 12 complete weeks of pay preceding the week of 24 June.";

(2) by striking out the third paragraph.

80. Section 7 of the said Act is repealed.

81. Section 8 of the said Act is amended by striking out subparagraph *b* of the second paragraph.

ACT RESPECTING MANPOWER VOCATIONAL TRAINING AND QUALIFICATION

82. Section 1 of the Act respecting manpower vocational training and qualification (R.S.Q., chapter F-5) is amended by striking out paragraphs *o.*1, *o.*2 and *r*.

83. Section 45 of the said Act is repealed.

ACT RESPECTING THE MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE AND ESTABLISHING THE COMMISSION DES PARTENAIRES DU MARCHÉ DU TRAVAIL

84. Section 60 of the Act respecting the Ministère de l'Emploi et de la Solidarité sociale and establishing the Commission des partenaires du marché du travail (R.S.Q., chapter M-15.001) is amended

(1) by inserting the following paragraph after paragraph 3:

"(3.1) the fines collected pursuant to section 141.1 of the Act respecting labour standards (chapter N-1.1);";

(2) by adding the following paragraph:

"The sums referred to in subparagraph 3.1 of the first paragraph are allocated to the implementation and management of reclassification assistance measures."

ACT RESPECTING THE MINISTÈRE DU TRAVAIL

85. Section 11 of the Act respecting the Ministère du Travail (R.S.Q., chapter M-32.2) is amended by adding the following paragraph at the end:

"The Minister shall also, in collaboration with the bodies concerned, conduct or commission studies on changes in conditions of employment in Québec and make such studies available every five years."

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

86. The Regulation respecting the notice of collective dismissal (R.R.Q., 1981, c. F-5, r.1) remains in force until it is replaced by a regulation made under section 89 of the Act respecting labour standards (R.S.Q., chapter N-1.1).

87. In any other Act, in any regulation, order in council, order, agreement, contract or other document, unless the context indicates otherwise and with the necessary modifications, any reference to the Act respecting manpower vocational training and qualification (R.S.Q., chapter F-5) as regards a collective dismissal is a reference to the corresponding provision of Division VI.0.1 of Chapter IV of the Act respecting labour standards (R.S.Q., chapter N-1.1).

88. The provisions of this Act come into force on 1 May 2003, except sections 2 and 3, paragraph 2 of section 7, paragraph 4 of section 14, sections 47, 55, 68, 76 and 77, and section 78 insofar as it concerns sections 123.9 and 123.12 of the Act respecting labour standards, which come into force on 1 June 2004, and sections 23 and 32, paragraph 6, insofar as it concerns paternity leave, and paragraph 6.1 of section 89 of the Act respecting labour standards enacted by paragraph 3 of section 57, and paragraph 2 of section 66, which come into force on the date of coming into force of section 9 of the Act respecting parental insurance (2001, chapter 9).