



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-NINTH LEGISLATURE

Bill 35

(2009, chapter 19)

An Act to modify the occupational health and safety regime, particularly in order to increase certain death benefits and fines and simplify the payment of the employer assessment

Introduced 23 April 2009**Passed in principle 26 May 2009****Passed 10 June 2009****Assented to 10 June 2009**

EXPLANATORY NOTES

This Act amends the Act respecting industrial accidents and occupational diseases to increase certain death benefits and to provide for the payment of a lump sum indemnity to the children of a worker who, at the time of death, did not have a spouse.

It further amends that Act so that the employment income used to determine the income replacement indemnity to which a person who has suffered an employment injury while participating in a program of activities during confinement is entitled will in future be based on the wage actually earned under that program and not on the minimum wage.

Moreover, this Act simplifies the payment of the employer assessment under that Act. As a general rule, periodic payments of the assessment are to be made to the Minister of Revenue under the same terms and conditions as those applying to payroll deductions and other employer contributions. It allows the exchange of information needed for that purpose and amends to that end the Act respecting the Ministère du Revenu.

In addition, this Act amends the Act respecting occupational health and safety to progressively increase fines. The amount of fines will double as of 1 July 2010 and triple as of 1 January 2011. The amount of fines will from then on be revalorized annually starting 1 January 2012.

This Act also amends that Act to specify the incidents requiring an employer to forward a written work accident report to the Commission de la santé et de la sécurité du travail. It also specifies that a person who, although not an employer, retains the services of a worker for the purposes of the person's establishment must fulfill the obligations imposed on an employer under the Act.

Lastly, this Act includes certain consequential amendments and transitional provisions.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- Act respecting occupational health and safety (R.S.Q., chapter S-2.1);
- Act to amend the Act respecting industrial accidents and occupational diseases and the Workers' Compensation Act (2006, chapter 53).

Bill 35

AN ACT TO MODIFY THE OCCUPATIONAL HEALTH AND SAFETY REGIME, PARTICULARLY IN ORDER TO INCREASE CERTAIN DEATH BENEFITS AND FINES AND SIMPLIFY THE PAYMENT OF THE EMPLOYER ASSESSMENT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

1. The Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) is amended by inserting the following section after section 81:

“81.1. Section 65, insofar as it relates to the minimum employment income, does not apply to the computation of the income replacement indemnity to which a person described in section 12.1 is entitled during confinement. It applies, however, if the person dies, to determine the amount of an indemnity to which that person’s spouse or another dependent is entitled.”

2. Section 100 of the Act is amended by replacing “\$50 000” by “\$94,569”.

3. The Act is amended by inserting the following section after section 101:

“101.1. If the deceased worker has no spouse on the date of his death, but has a minor child, a child of full age over half of whose needs were provided for by the worker or a child of full age but under 25 years of age who, on that date, is attending an educational institution on a full-time basis, the child is entitled to a lump sum indemnity equal to the product obtained by multiplying the gross annual employment income of the worker determined in accordance with sections 63 to 82 and revalorized where required, by the factor provided in Schedule III in relation to the age of the worker on the date of his death. If there is more than one such child, the indemnity is divided equally between them.

In no case may the indemnity be less than \$94,569.”

4. Section 110 of the Act is amended

(1) by replacing “\$3 000” by “\$24,587”;

(2) by adding the following sentence at the end: “If both parents are deceased, the indemnity is paid to the succession of the deceased worker, except if the property of the succession is to be taken by the State.”

5. Section 111 of the Act is amended by replacing “\$1 500” in paragraph 1 by “\$4,599”.

6. Section 139 of the Act is amended by inserting “in section 101.1 for a child of full age attending an educational institution on a full-time basis and that provided for” after “death benefit provided for”.

7. Section 345 of the Act is amended by replacing “, sections 319” by “and sections 315.1 to 315.4, 319”.

8. Section 361 of the Act is amended by inserting “and 101.1” after “sections 98 to 100”.

9. Section 362 of the Act is amended by inserting “and 101.1” after “sections 98 to 100”.

10. Section 362.1 of the Act is amended by inserting “and 101.1” after “sections 98 to 100”.

11. The heading of Schedule III to the Act is replaced by the following heading:

“LUMP SUM DEATH INDEMNITIES
(Sections 98 and 101.1)”.

ACT RESPECTING THE MINISTÈRE DU REVENU

12. The Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by inserting the following section after section 69:

“**69.0.0.0.1.** The rules prescribed in this division apply, with the necessary modifications, to information, other than information contained in a tax record, that the Minister holds for the purposes of a mandate assigned to the Minister by an Act whose administration is not the responsibility of the Minister.

However, section 69.3 does not apply to information communicated by the Minister to a person if the information is necessary for the exercise of the person’s functions within the scope of such a mandate.”

13. Section 69.0.0.7 of the Act is amended by inserting the following subparagraph after subparagraph *b.2* of the first paragraph:

“(b.3) the carrying out of a mandate assigned to the Minister by an Act whose administration is not the responsibility of the Minister;”.

14. Section 69.0.0.8 of the Act is replaced by the following section:

“**69.0.0.8.** Any information from a tax record that the Minister uses for a purpose under any of subparagraphs *b* to *b.2* of the first paragraph of section 69.0.0.7 and that is included in a record established for any of those purposes is not subject to the rules prescribed in this division.”

15. Section 69.1 of the Act is amended by adding the following subparagraph after subparagraph *v* of the second paragraph:

“(w) the Commission de la santé et de la sécurité du travail, insofar as the information is necessary for the administration of the provisions of the Act respecting industrial accidents and occupational diseases (chapter A-3.001) that concern the periodic payments the employers must make to the Minister.”

16. Section 69.3 of the Act is amended by inserting “, other than information used solely to identify a person,” after the first occurrence of “information” in the first paragraph.

ACT RESPECTING OCCUPATIONAL HEALTH AND SAFETY

17. The Act respecting occupational health and safety (R.S.Q., chapter S-2.1) is amended by inserting the following section after section 51:

“**51.1.** A person who, although not an employer, retains the services of a worker for the purposes of his establishment must fulfill the obligations imposed on an employer by this Act.”

18. Section 62 of the Act is amended, in the first paragraph,

(1) by replacing “if it has caused” in the portion before subparagraph 1 by “if the incident has caused”;

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

“(2) the loss of a limb or of part of a limb, the total or partial loss of the use of a limb or a significant physical trauma to a worker;”;

(3) by striking out “ou” at the end of subparagraph 3 in the French text;

(4) by replacing “\$50 000” in subparagraph 4 by “\$150,000”.

19. The Act is amended by inserting the following section after section 62:

“62.0.1. The amount set out in subparagraph 4 of the first paragraph of section 62 in relation to material damage is revalorized on 1 January each year using the method described in sections 119 to 123 of the Act respecting industrial accidents and occupational diseases (chapter A-3.001).”

20. Section 136.8 of the Act is amended by replacing “The expenses of the Commission related to the application of the Acts administered by the Commission are also payable by the fund” in the second paragraph by “The fund is also required to pay any expenses the Commission may claim for the carrying out of the Acts it administers”.

21. Sections 236 and 237 of the Act are replaced by the following sections:

“236. Every person who contravenes this Act or a regulation or refuses to conform to, or incites a person not to conform to, a decision or order rendered under this Act or the regulations is guilty of an offence and liable,

(1) in the case of a natural person, to a fine of not less than \$600 nor more than \$1,500 for a first offence, a fine of not less than \$1,500 nor more than \$3,000 for a second offence, and a fine of not less than \$3,000 nor more than \$6,000 for a third or subsequent offence; and

(2) in the case of a legal person, to a fine of not less than \$1,500 nor more than \$3,000 for a first offence, a fine of not less than \$3,000 nor more than \$6,000 for a second offence, and a fine of not less than \$6,000 nor more than \$12,000 for a third or subsequent offence.

“237. Every person who, by an act or omission, does anything that directly and seriously compromises the health, safety or physical well-being of a worker is guilty of an offence and liable,

(1) in the case of a natural person, to a fine of not less than \$1,500 nor more than \$3,000 for a first offence, a fine of not less than \$3,000 nor more than \$6,000 for a second offence, and a fine of not less than \$6,000 nor more than \$12,000 for a third or subsequent offence;

(2) in the case of a legal person, to a fine of not less than \$15,000 nor more than \$60,000 for a first offence, a fine of not less than \$30,000 nor more than \$150,000 for a second offence, and a fine of not less than \$60,000 nor more than \$300,000 for a third or subsequent offence.

“237.1. The amount of the fines set out in sections 236 and 237 are revalorized on 1 January each year using the method described in sections 119 to 123 of the Act respecting industrial accidents and occupational diseases (chapter A-3.001).”

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

22. Section 11 of the Act to amend the Act respecting industrial accidents and occupational diseases and the Workers' Compensation Act (2006, chapter 53) is amended by striking out “, taking into account any periodic payments made by the employer” at the end of section 306 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) that it enacts.

23. Section 12 of the Act is amended

(1) by replacing section 315.1 of the Act respecting industrial accidents and occupational diseases that it enacts by the following section:

“315.1. An employer described in the first paragraph of section 1015 of the Taxation Act (chapter I-3) must, on the dates, for the periods and subject to the conditions set out in that section, make periodic payments to the Minister of Revenue, on account of the assessments to be paid, in the amount determined according to the method prescribed by regulation of the Commission.

Any other employer that belongs to a category determined by regulation of the Commission must, on the dates, for the periods and subject to the conditions determined by regulation of the Commission among those set out in section 1015 of the Taxation Act, make periodic payments to the Minister of Revenue, on account of the assessments to be paid, in the amount determined according to the method prescribed by regulation of the Commission.

For the purposes of this section, the Minister of Revenue exercises the powers conferred on that Minister by the Act respecting the Ministère du Revenu (chapter M-31) with respect to the remittance and receipt of any amount that is payable under section 1015 of the Taxation Act.”;

(2) by adding the following sections after section 315.2 of the Act respecting industrial accidents and occupational diseases that it enacts:

“315.3. If an employer pays to the Minister of Revenue an amount that is lower than the aggregate of the amounts stated by the employer as payable by him to that Minister as an employer under a fiscal law within the meaning of the Act respecting the Ministère du Revenu (chapter M-31) or under section 315.1, or as remittable by him to that Minister under such a fiscal law, the amount paid by the employer as periodic payments under section 315.1 is equal to the proportion of the amount he pays to that Minister that the amount stated by him as payable by him to that Minister as periodic payments under section 315.1 is of the aggregate of the amounts stated by him as payable by him to that Minister as an employer under a

fiscal law or under section 315.1, or as remittable by him to that Minister under a fiscal law.

“315.4. The Minister of Revenue shall remit to the Commission, at least once a month, the amounts paid to that Minister under section 315.1, after deducting the agreed fees and taking into account any adjustments arising from agreements.

“315.5. Despite section 174 of the Act respecting occupational health and safety (chapter S-2.1), the Commission and the Minister of Revenue shall enter into an agreement for the communication of the information and documents required for the purpose of administering the provisions concerning the periodic payments made by employers to the Minister of Revenue.”

24. Section 13 of the Act is amended by replacing the portion before the fourth paragraph of section 316 of the Act respecting industrial accidents and occupational diseases that it enacts by the following:

“13. Section 316 of the Act is amended

(1) by replacing “292” in the second paragraph by “291”;

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

25. Section 14 of the Act is amended by replacing “a notice or information required under section 290 or 291” in section 319 of the Act respecting industrial accidents and occupational diseases that it replaces by “information required under section 291”.

26. Section 16 of the Act is amended

(1) by striking out “or notify the Commission if the amount of a payment is equal to zero” in the first paragraph of section 321.2 of the Act respecting industrial accidents and occupational diseases that it enacts;

(2) by striking out the second paragraph of section 321.2 of that Act that it enacts;

(3) by replacing “pay a penalty of” in section 321.3 of that Act that it enacts by “is liable to a penalty of”.

27. Section 27 of the Act is amended by replacing subparagraph 12.2.2 of the first paragraph of section 454 of the Act respecting industrial accidents and occupational diseases that its paragraph 3 enacts by the following subparagraph:

“(12.2.2) determining, for the purposes of section 315.1, standards applicable to the periodic payments the employer must make to the Minister of Revenue and the categories of employers who must make such payments;”.

28. Section 38 of the Act is replaced by the following section:

“38. The provisions of this Act come into force on the date or dates to be set by the Government, except section 23, paragraphs 2 and 4 to 8 of section 27 and sections 28 to 37, which come into force on 14 December 2006, sections 1 to 5, 15 and 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, and section 12 insofar as it enacts section 315.5 of the Act respecting industrial accidents and occupational diseases, which comes into force on 10 June 2009.”

TRANSITIONAL AND FINAL PROVISIONS

29. Section 81.1 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001), enacted by section 1, applies to occupational diseases for which a claim is filed with the Commission de la santé et de la sécurité du travail after (*insert the date preceding the date of coming into force of section 1*), to industrial accidents that occur after that date, and to any recurrence, relapse or aggravation that is related to such a disease or to such an accident.

Sections 100, 110, 111, 139, 361, 362 and 362.1 of the Act respecting industrial accidents and occupational diseases, as amended by sections 2, 4 to 6 and 8 to 10, section 101.1 of that Act, enacted by section 3, and the heading of Schedule III to that Act, replaced by section 11, apply to deaths that occur after (*insert the date preceding the date of coming into force of section 2*).

30. The provisions of this Act come into force on the date or dates to be set by the Government, and not later than 1 January 2012, except

(1) sections 12 to 16 and 28, which come into force on 10 June 2009;

(2) section 21, insofar as it enacts sections 236 and 237 of the Act respecting occupational health and safety (R.S.Q., chapter S-2.1), which comes into force on 1 July 2010; and

(3) section 21, insofar as it enacts section 237.1 of that Act, which comes into force on 1 January 2012.

However, for the period from 1 July 2010 to 31 December 2010, sections 236 and 237 of the Act respecting occupational health and safety, enacted by section 21, must read as though the amounts of the fines were reduced by one third.