



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 33
(2019, chapter 20)

**An Act to amend the Labour Code
concerning the maintenance of
essential services in public services
and in the public and parapublic
sectors**

**Introduced 14 June 2019
Passed in principle 24 September 2019
Passed 29 October 2019
Assented to 30 October 2019**

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EXPLANATORY NOTES

This Act proposes amendments to the Labour Code as regards the essential services that must be maintained in the event of a strike in public services and in the public and parapublic sectors.

With respect to public services, the Administrative Labour Tribunal is granted the power, currently conferred on the Government, to order that essential services be maintained if a strike may endanger public health or safety. The Tribunal is empowered to make such an order, for the same reason, with respect to a service, undertaking or enterprise if, because of the nature of its operations, it is comparable to a public service. The minimum period a certified association must wait before it may declare a strike in a public service after an agreement or a list of essential services has been forwarded to the Tribunal and the employer is increased to seven clear working days. Moreover, the Tribunal is given the power, currently conferred on the Government, to suspend the exercise of the right to strike in cases where the essential services in a public service are insufficient and this endangers public health or safety.

With respect to the public and parapublic sectors, the Act replaces the obligation to maintain a percentage of employees per work shift in an institution in the event of a strike by the obligation to maintain essential services whose interruption may endanger public health or safety. It mainly provides that those services must be negotiated between the parties and that if no agreement is reached, a certified association must send the Tribunal a list providing for the essential services that must be maintained in the event of a strike. Such an agreement or list must comply with certain criteria and be approved by the Tribunal, with or without amendment.

Moreover, the Tribunal's remedial powers are modified so that the Tribunal may, in public services and in the public and parapublic sectors, conduct an inquiry or make an order when the essential services provided for in an agreement or list are not sufficient.

Finally, the Act updates the definition of "public service" and contains consequential and transitional provisions.

LEGISLATION AMENDED BY THIS ACT:

- Labour Code (chapter C-27).

Bill 33

AN ACT TO AMEND THE LABOUR CODE CONCERNING THE MAINTENANCE OF ESSENTIAL SERVICES IN PUBLIC SERVICES AND IN THE PUBLIC AND PARAPUBLIC SECTORS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

LABOUR CODE

- 1.** Section 109.1 of the Labour Code (chapter C-27) is amended by replacing “an order has been made by the Government” in subparagraph iii of paragraph c by “a decision has been rendered”.
- 2.** Section 111.0.16 of the Code is amended by striking out paragraphs 1.2 and 3.
- 3.** Section 111.0.17 of the Code is replaced by the following sections:

“111.0.17. If of the opinion that a strike may endanger public health or safety, the Tribunal, on its own initiative or at the request of an employer or of a certified association in a public service, may order both parties to maintain essential services in the event of a strike.

For the same reason, the Tribunal, on its own initiative or at the request of a service, undertaking or enterprise not referred to in section 111.0.16 or of a certified association in that service, undertaking or enterprise, may order both parties to maintain essential services in the event of a strike, if the service, undertaking or enterprise, because of the nature of its operations, is comparable to a public service. In such a case, the service, undertaking or enterprise is considered a public service for the purposes of this Code.

The Tribunal may, in addition, render a decision under the first or second paragraph at the request of a person other than a party, if it considers that the person has a sufficient interest.

From the date the Tribunal’s decision is notified to the parties, the exercise of the right to strike is suspended until the certified association concerned meets the requirements of sections 111.0.18 and 111.0.23.

“111.0.17.1. The Tribunal’s decision to require a public service to maintain essential services in the event of a strike applies to each stage of the negotiations.

However, the Tribunal, on its own initiative or at a party's request, may revoke the decision to order that essential services be maintained.

“111.0.17.2. Before rendering a decision under the first or second paragraph of section 111.0.17 or the second paragraph of section 111.0.17.1, the Tribunal shall give the parties and, if applicable, the person having a sufficient interest, the opportunity to submit their views.”

4. Section 111.0.18 of the Code is amended by replacing “in an order made” in the first paragraph by “by a decision rendered”.

5. Section 111.0.19 of the Code is amended by striking out “, before reporting it to the Minister pursuant to section 111.0.20,” in the third paragraph.

6. Sections 111.0.20 and 111.0.21 of the Code are repealed.

7. Section 111.0.23 of the Code is amended

(1) by replacing “in an order made” in the first paragraph by “by a decision rendered”;

(2) in the third paragraph,

(a) by replacing “in an order made” by “by a decision rendered”;

(b) by replacing both occurrences of “seven days” by “seven clear working days”.

8. Section 111.0.23.1 of the Code is amended

(1) in the first paragraph,

(a) by replacing “dans un décret pris” in the French text by “par une décision rendue”;

(b) by replacing “contemplated in an order made under section 111.0.17 must give the Minister, the employer and the Tribunal” by “must give the Minister and the employer, and the Tribunal in the case of a public service contemplated by a decision rendered under section 111.0.17,”;

(2) by replacing “by an order made” in the third paragraph by “by a decision rendered”.

9. Section 111.0.24 of the Code is replaced by the following section:

“111.0.24. In a public service contemplated by a decision rendered under section 111.0.17, the Tribunal may suspend the exercise of the right to strike if of the opinion that the essential services provided for or actually rendered where a strike is apprehended or in progress are insufficient and that this endangers public health or safety.

The suspension has effect from the date the decision is notified to the parties and until it is shown to the satisfaction of the Tribunal that, should the right to strike be exercised, sufficient essential services will be maintained in that public service.”

10. Section 111.0.25 of the Code is repealed.

11. Section 111.0.26 of the Code is amended by replacing “in an order made” by “by a decision rendered”.

12. Sections 111.10 and 111.10.1 of the Code are replaced by the following sections:

“111.10. In the event of a strike by an institution’s employees, the parties are required to maintain essential services. Such services are those whose interruption may endanger public health or safety.

“111.10.1. The essential services that must be maintained shall be negotiated between the certified association and the institution. The negotiation may be conducted according to the parameters agreed upon by that association or a group of associations it forms part of and the institution or its representative.

Any agreement on essential services must comply with the following criteria:

(1) the essential services must be broken down per unit of care and class of care or services;

(2) the normal operation of intensive care units and emergency units, if any, must be ensured; and

(3) a person’s freedom of access to the institution’s services must be ensured.

Any agreement must be sent to the Tribunal for approval.

The Tribunal, on its own initiative or at the request of any of the parties, may designate a person to help the parties to reach an agreement.”

13. Section 111.10.2 of the Code is replaced by the following section:

“111.10.2. Every institution shall, at the request of the Tribunal or of a certified association, communicate to both of them any relevant information on the essential services that must be maintained, within 10 working days after receipt of the request. The request must specify the required information.”

14. Section 111.10.3 of the Code is amended by replacing the first three paragraphs by the following paragraph:

“If no agreement is reached, the certified association shall send to the Tribunal for approval a list providing for the essential services that must be maintained in the event of a strike. Such a list shall comply with the criteria set out in the second paragraph of section 111.10.1.”

15. Section 111.10.4 of the Code is amended

(1) by replacing “, 111.10.1 and 111.10.3” in the first paragraph by “and 111.10.1”;

(2) by striking out the second paragraph.

16. Section 111.10.5 of the Code is replaced by the following section:

“111.10.5. If the Tribunal considers that an agreement or a list does not comply with the criteria set forth in sections 111.10 and 111.10.1, it may make the recommendations it considers appropriate to the parties for amending the agreement or the list, or it may approve the agreement or the list with amendments.”

17. Section 111.10.7 of the Code is amended by replacing “section 111.10, 111.10.1 and 111.10.3” in the second paragraph by “sections 111.10 and 111.10.1”.

18. Section 111.16 of the Code is amended by inserting “are not sufficient or” after “in a list or agreement” in the first paragraph.

19. Section 111.17 of the Code is amended by inserting “are not sufficient or” after “in a list or agreement” in the first paragraph.

20. Section 111.20 of the Code is amended by replacing “111.0.19” in the first paragraph by “111.0.17, 111.0.19, 111.0.24”.

21. The Code is amended by inserting the following section after section 111.21:

“111.21.1. Any negotiation of essential services that are governed by this chapter must be begun and carried on diligently and in good faith.”

22. Section 146.2 of the Code is amended by striking out “111.10.”.

TRANSITIONAL AND FINAL PROVISIONS

23. For the purpose of determining the essential services that must be maintained in the event of a strike by a certified association to which a collective agreement that expires on 31 March 2020 applies, the negotiation of essential services under the first paragraph of section 111.10.1 of the Labour Code (chapter C-27), as replaced by section 12, must begin on 30 October 2019.

In the case of a certified association to which a collective agreement that expires on 31 March 2021 applies, the negotiation of such services must begin on 2 October 2020.

24. For the purpose of determining the essential services that must be maintained in the event of a strike by a certified association to which a collective agreement that expires on 31 March 2020 applies, the Tribunal may, at the parties' request, settle any difficulty arising out of the application of sections 111.10.1 and 111.10.3 of the Labour Code, respectively amended by sections 12 and 14.

The Tribunal may also

(1) make recommendations on the parameters to be agreed on by an association or a group of associations it forms part of and an institution or its representative; and

(2) make recommendations as to the content and breakdown of the essential services provided for in an agreement or a list, before the agreement or list is communicated to it under those sections 111.10.1 and 111.10.3.

The Tribunal shall render a decision or issue recommendations within 30 days.

25. Despite the first paragraph of section 111.10.7 of the Labour Code, as amended by section 17, the Administrative Labour Tribunal may, if warranted by a special situation and after having informed the parties, extend the time specified in that paragraph by not more than 30 days in order to rule on whether or not the essential services that must be maintained in the event of a strike by a certified association to which a collective agreement that expires on 31 March 2020 applies are sufficient.

26. An employer and a certified association subject to an order made under section 111.0.17 of the Labour Code, as it read before 30 October 2019, are deemed to be subject, from that date, to a decision of the Administrative Labour Tribunal rendered under the first paragraph of section 111.0.17 of the Labour Code, as replaced by section 3.

A party may, however, request the Tribunal to revoke the decision in accordance with the second paragraph of section 111.0.17.1 of the Labour Code, enacted by section 3.

27. This Act comes into force on 30 October 2019.