

Legal update

The National Assembly unanimously passes a bill amending Quebec's *Act respecting labour standards* (ALS)

June 2018

Employment and labour

In March, we [reported](#) that Quebec's labour minister, Dominique Vien, had just tabled Bill 176: An Act to amend the *Act respecting labour standards* and other legislative provisions mainly to facilitate family-work balance.

In response to pressure from the government, which was seeking to pass its bill before the end of the current parliamentary session (and before the fall election), debates took place over the past few days, and the bill was passed unanimously on June 12, 2018 and assented to a few hours later.

The passage of the Bill put an end to orphan clauses for pension plans and other employee benefits. In addition, as mentioned in a recent [publication](#), new provisions will have a significant impact on personnel placement agencies. Finally, provisions regarding harassment of psychological or sexual nature and family-work balance were revisited in order to better address current social issues.

The following are the main issues requiring the attention of employers:

Orphan clauses

First, orphan clauses will be prohibited for pension plans and other employee benefits. This decision surprised many commentators, especially since the [Fortin Report](#), published in November 2017, recommended that the government wait for other provinces to enact similar legislation before taking such an approach.

For the moment, Quebec is the only province to prohibit these types of clauses, which could cause headaches for companies operating in more than one jurisdiction. However, orphan clauses existing before the coming into force of new provisions will not be affected and will continue to be valid. The new provisions relating to orphan clauses came into force on June 12, 2018.

Placement agencies

In addition to establishing the principle whereby a placement agency may not remunerate an employee at a lower rate of pay than the rate paid to employees of the client company who perform the same duties in the same establishment, the new provisions require agencies to hold a licence and provide for the implementation of regulations concerning such agencies.

Companies that retain the services of an agency that does not hold a licence will also be liable to a penalty. Finally, personnel placement agencies and the client companies that retain their services will now be solidarily liable to an employee for the pecuniary obligations established by the ALS.

These amendments will come into force when the government has passed the relevant regulations.

Psychological or sexual harassment

Sexual harassment will now be explicitly recognized as a form of psychological harassment.

Companies will have to adopt a psychological harassment prevention policy and introduce a mechanism for processing psychological harassment complaints.

Furthermore, following the debates that took place before the bill was passed, it was agreed that the time limit to file a complaint of psychological harassment with the CNESST will be increased from 90 days to two (2) years from the most recent occurrence of the offending conduct alleged by the complainant.

These amendments have been in force since June 12, 2018.

Family-work balance

The new version of the ALS provides, among other things, for an increase in the number of weeks of absence authorized for certain events associated with parental responsibilities, as well as certain days of absence to be taken to act as a caregiver. These amendments have been in force since June 12, 2018.

In addition, as of January 1, 2019, an employee will be entitled to a third week of paid vacation after three years of continuous service.

Other amendments that will come into effect on January 1, 2019 pertain to overtime hours and work schedules. An employee may now refuse to work more than two (2) hours beyond his/her regular daily working hours or when he/she has not been informed at least five (5) days before he/she is required to work, except in extraordinary circumstances (risks for the workers or the population, etc.).

Takeaways

While this may be just a case of political opportunism, it seems clear that the current government would like to align the minimum labour standards with the values held by a new generation of workers.

That is why, with the exception of a few provisions that will come into effect on January 1, 2019 (or when the pending regulations come into force), the new provisions became effective upon receiving the assent of the Lieutenant Governor on June 12, 2018.

Other provinces, including Ontario and Alberta, have already substantially overhauled their minimum labour standards. This time, Quebec, which often boasts about being a trendsetter, is following its neighbours' lead while taking on the role of trailblazer in eliminating orphan clauses.

Several topics have nevertheless not been retained in this overhaul of the ALS – for instance, the right to disconnect, which is becoming increasingly popular and has been codified in several countries, including France. The debates regarding minimum labour standards are likely to be front and centre for months to come.

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