Occupational health and safety: Five new provisions to the AIAOD, effective October 6, 2022

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On September 30, 2021, the Québec National Assembly enacted Bill C-27, titled *An Act to modernize the occupational health and safety regime* (Bill C-27). This Bill introduces significant changes to the *Act respecting industrial accident and occupational diseases* (AIAOD); these changes started coming into force on October 6, 2021, and will continue to be gradually rolled out over the next three years.

This article provides a practical summary of the latest changes introduced by Bill C-27, which came into effect on **October 6, 2022**, with respect to compensation for occupational injuries.

1. Rules governing the accommodation duty to facilitate a return to work

Section 170 of the AIAOD is amended to incorporate the principles elaborated in the Supreme Court of Canada's decision in Caron, with respect to the duty of reasonable accommodation imposed on employers by the *Charter of Human Rights and Freedoms*, in the context of the application of the AIAOD and, in particular, of rehabilitation measures (right to return to work, rehabilitation, etc.)

Such accommodation may include adjusted tasks and changes to the work schedule or work organization, provided they do not alter the nature of the job.

The *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST) alone will determine whether reasonable accommodation is needed to enable the worker to carry on a suitable employment (section 170.1 AIAOD).

The employer must collaborate with the CNESST in implementing accommodation measures, unless able to prove the existence of undue hardship (section 170.2 AIAOD). In practice, this entails an analysis of the options reasonably available to the worker and the employer in the context of a return to work following an absence due to illness that resulted in functional limitations. We therefore

recommend that employers develop a procedure for managing these types of situations.

An employer who refuses to comply or reinstate a worker may be subject to a monetary administrative penalty equivalent to the cost of the benefits to which the worker could have been entitled during the period in which the employer failed his obligations (section 170.4 AIAOD). It should also be noted that a worker who believes they have not been reasonably accommodated could seek other remedies when applicable.

2. CNESST job search support and assistance

The CNESST will now provide job search support services to a worker who has suffered an employment injury where he is unable, as a result of his injury, to carry on his employment and where he becomes able to carry on a suitable employment that is not available.

These services will also be provided to a worker who has suffered an employment injury, whether or not he sustained permanent physical or mental impairment, where he is again able to carry on his employment after the period for exercising his right to return to work has expired, and where his employer does not reinstate him in his employment or in an equivalent employment.

3. Introduction of a form prescribed by the CNESST for temporary assignments

Section 179 AIAOD is amended to provide that the employer must now use the form prescribed by the CNESST for temporary assignments, which contains a description, by the physician in charge, of the temporary functional limitations resulting from an injury.

It should be noted that the form provided by the CNESST still requires the employer to propose specific tasks (two options may be submitted). The employer may only proceed with the temporary assignment of the worker if one or the other of the proposed options is approved by the physician in charge. To this extent, the specifics provided by the physician in charge may be used as a guide during the authorized assignment and/or in the identification of suggested new tasks, if the first options are declined.

Additionally, the employer will be required to forward the duly completed form to the CNESST whether or not the assignment has been authorized by the physician in charge.

4. Employer’s collaboration in a temporary assignment

Section 180 of the AIAOD now provides that if a worker is assigned work that involves fewer hours than are usually performed in the course of employment, the

employer will be required to indicate on the form the option they choose for the payment of wages.

The employer must specify whether it will pay the worker (1) the same salary or wages and benefits to which the worker is normally entitled or (2) salary or wages and benefits only for the hours of work involved in the temporary assignment.

If the employer chooses option #1, they must send the CNESST a declaration of the hours worked by the worker within 90 days of the end of the pay period in order to claim reimbursement for the net wages paid for hours paid but not worked, up to the amount of the income replacement indemnity to which the worker would have been entitled without this assignment.

Please note that the employer may change the option chosen **only once** for the same employment injury.

5. Changes in the authority of the Bureau d'évaluation médicale (BEM)

Section 221 of the AIAOD now provides that the BEM member will be **required** to rule on items 4 (permanent impairment) and 5 (functional limitations) when they deem the occupational injury to be consolidated, unless there are medical reasons for not doing so.

In addition, it should also be noted that the BEM has the authority to rule on the date of consolidation if it is of the opinion that the injury no longer requires care and treatment.

For more information regarding the new requirements of Bill C27, we invite you to consult a previous BLG article on the passage of Bill 59, which offers a practical summary of the provisions that will come into force at each stage of the current reform of Québec legislation on occupational health and safety.

For any questions you may have about the legal framework governing the occupational health and safety regime in Québec, please reach out to your BLG lawyer or one of the key contacts below from our Labour and Employment Group.

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