CNESST adopts flexible measures regarding cost allocations for occupational injuries

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We want to bring your attention to the flexible mesures adopted by the Commission des normes, de l'équité, de la santé et de la sécurité du travail's (CNESST) concerning the management of occupational injury files in matters of costs assignment.[1]

The CNESST has adopted measures that relax its position on such matters under Section 326 of the Act respecting accidents and occupational diseases (AIAOD) which reads as follows:

> **326.** *The Commission shall impute to the employer the cost of benefits payable by reason of an industrial accident suffered by a worker while in the employ of the employer.*
>
> *It may also, on its own initiative or on the application of an employer, impute the cost of benefits payable by reason of an industrial accident to the employers of one, several or all units if the imputation under the first paragraph would have the effect of causing an employer to support unduly the cost of benefits due by reason of an industrial accident imputable to a third person or unduly burdening an employer.*
>
> *Any application under the second paragraph must be filed in writing by the employer within the year following the date of the accident, and state the reasons for the application.*

This article establishes the general rule for an employer who is imputed the benefit-costs related to workers involved in an industrial accident while employed. Certain exceptions are provided in the second paragraph of the provision, which can prompt a transfer of benefits costs when the charges resulting from the first paragraph's indications unfairly burden an employer.

Since the emergence of COVID-19 in Québec last March, employers have faced many challenges, particularly when managing occupational injury files.

Indeed, due to the pandemic, many injured workers have had to interrupt their temporary assignment in the employer's establishment and suspend their care and

treatment. These unexpected circumstances necessarily and directly affect the employer by altering injury recovery, modifying the treatment plan, and thus delaying consolidation.

For these reasons, the CNESST announced that it would be more flexible in analyzing transfer requests related to the pandemic. Indeed, it will agree to grant the transfer of the cost of benefits in cases where COVID-19 would have caused a delay in files' progress. It would do so regardless of the proportion of expenses attributable to situations related to COVID-19 in comparison to the costs resulting from the accident.

For example, the CNESST has indicated that the postponement or cancellation of surgery, a workplace visit for job accommodation or a medical consultation with an expert, due to COVID-19, constitute some of the recognized situations which may unfairly burden the employer and for which CNESST will provide a cost transfer.

Employers who have been unfairly burdened by a situation relating to COVID-19 must submit their transfer of costs request under section 326, paragraph 2 of the AIAOD. And, must do so in writing within the year following the date of the accident or within one year of the event's date giving rise to the claim and state the reasons supporting the claim.

It should be mentioned that CNESST has already, on its initiative, reviewed and adjusted the costs of some employers' files. That said, insofar as CNESST did not do this revision from the outset, we strongly encourage employers who find themselves unfairly burdened by situations resulting from the impacts of the COVID-19 crisis to quickly submit a request for the transfer of costs before March 12, 2021.

BLG's labor and employment law professionals are available to help you manage your workers compensation cases and their associated costs.

[1] CNESST flexibility measures for employers and workers in response to COVID-19

By

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