



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 74

(1996, chapter 70)

An Act to amend the Act respecting industrial accidents and occupational diseases and the Act respecting occupational health and safety

Introduced 14 November 1996

Passage in principle 27 November 1996

Passage 19 December 1996

Assented to 23 December 1996

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EXPLANATORY NOTES

This bill amends the Act respecting industrial accidents and occupational diseases concerning the financing of the Commission de la santé et de la sécurité du travail in order, in particular,

– to take into account, in the determination of an employer's assessment, the experience associated with the risk insured by the Commission, and to provide special conditions for the application of such principle where the employer is involved in a transaction that is to be defined by regulation of the Commission ;

– to confer on the Commission the power to make an agreement with a group of employers in order to determine the rates applicable to them, and to provide that the agreement is to include a clause providing for dispute arbitration as a replacement for all other remedies available under the Act ;

– to confer also on the Commission the power to relax the procedure for assessing employers, in particular in respect of the statement of wages, the classification of employers, the determination of personalized rates and the determination and payment of the assessment ;

– to clarify certain rules for the imputation of the cost of employment injuries, for instance, by imposing a time limit on an employer who wishes to submit an application for the transfer or sharing of the cost of an employment injury where the accident is attributable to a third party or the worker was already handicapped at the time of the occurrence of the employment injury ;

– to provide for specific powers of inspection as regards employers ;

– to simplify the procedure for the adoption of regulations concerning employers' assessments ;

– to clarify the rules relating to the interest and the modification of the employer's assessment.

This bill also amends the conditions allowing workers to be protected under the Act while working outside Québec for an employer who has an establishment in Québec, and extends the power of the Commission as regards agreements.

The bill also provides that the Commission and the Régie de l'assurance-maladie du Québec are to enter into an agreement fixing the rules for the reimbursement by the Commission to the Régie of the sums paid by the Régie for the purposes of the Act and the administrative expenses. In addition, the bill amends the Act respecting occupational health and safety to strike out the provisions concerning the payment of inspection costs.

Lastly, the bill includes certain transitional and consequential amendments.

Bill 74

AN ACT TO AMEND THE ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES AND THE ACT RESPECTING OCCUPATIONAL HEALTH AND SAFETY

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

1. Section 7 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) is amended by striking out the second paragraph.

2. Section 8 of the said Act is replaced by the following section :

“8. This Act applies to a worker who is the victim of an industrial accident outside Québec or who suffers from an occupational disease contracted outside Québec if, when the accident occurs or the disease is contracted, the worker has his domicile in Québec and his employer has an establishment in Québec.

However, where the worker’s domicile is not in Québec, this Act applies where the worker had his domicile in Québec at the time of his assignment outside Québec, the work outside Québec is for a duration of not over five years when the accident occurs or the disease is contracted, and his employer has an establishment in Québec.”

3. The said Act is amended by inserting, after section 8, the following section :

“8.1. An agreement made under the first paragraph of section 170 of the Act respecting occupational health and safety (chapter S-2.1) may provide for exceptions to sections 7 and 8, on such conditions and to such extent as it determines.”

4. Section 38 of the said Act is amended by inserting, after the second paragraph, the following paragraph :

“Where a transaction referred to in section 314.3 has occurred, the employer involved in the transaction shall also have access free of charge to the record kept by the Commission in respect of an employment injury the cost of which is used to determine the employer’s assessment following the transaction.”

5. Section 160 of the said Act is amended by replacing the words “published each year by the Commission in the *Gazette officielle du Québec*” in the second and third lines by the words “adopted by the Commission by regulation”.

6. Section 197 of the said Act is amended by striking out the second paragraph.

7. Section 198 of the said Act is replaced by the following section :

“198. The Commission and the Régie de l’assurance-maladie du Québec shall enter into an agreement concerning the rules governing the reimbursement of the sums paid by the Régie for the purposes of this Act and the determination of the administrative expenses incurred for the payment of the services referred to in section 196.”

8. Section 283 of the said Act is amended by striking out the words “and each establishment of an employer” in the first and second lines.

9. The said Act is amended by inserting, after section 284, the following sections :

“284.1. In determining the employer’s assessment, the Commission shall take into account, in accordance with the rules provided for in this chapter, the experience related to the risk of employment injuries insured by the Commission.

“284.2. The Commission may make, with a group of employers it considers appropriate, an agreement determining, in particular, the special conditions governing the application to the employers of personalized rates or retrospective adjustment of the assessment as well as procedures for calculating such rates or adjustment. The Commission shall determine, by regulation, the framework within which the agreement is to be made.

Such an agreement may depart from the prescribed conditions and procedures used to fix an employer’s assessment and shall provide that disputes resulting from its application are to be submitted to arbitration and are excluded from any other remedy under this Act .”

10. Section 290 of the said Act is amended

(1) by striking out the words “, for each of his establishments,” in the second line of the second paragraph ;

(2) by replacing the words “his activities” in subparagraph 1 of the second paragraph by the words “the activities carried on in each of his establishments”.

11. Section 292 of the said Act is amended by striking out the words “for each of his establishments” in the second and third lines of the first paragraph.

12. The said Act is amended by inserting, after section 294, the following section:

“294.1. The Commission may regulate the statements of wages required of the employer under this division.”

13. Section 296 of the said Act is amended by striking out the words “in each of his establishments” in the second line of the first paragraph.

14. Section 297 of the said Act is amended by replacing the words “economic activity” in the second line by the word “classification”.

15. Section 298 of the said Act is replaced by the following section:

“298. For the purposes of assessment, the Commission shall classify each employer under one or more units, in accordance with the rules it determines by regulation.”

16. Sections 299 to 302 of the said Act are repealed.

17. Section 303 of the said Act is amended by striking out the words “and that of his establishment” in the second line of the first paragraph.

18. Section 304 of the said Act is amended by replacing the word “activity” in the third line by the word “classification”.

19. Section 304.1 of the said Act is amended

(1) by replacing the words “who, with respect to a unit under which he is classified,” in the second and third lines of the first paragraph by the words “in respect of each unit under which he is classified if the employer”;

(2) by replacing the word “activity” in the second line of the second paragraph by the word “classification”.

20. Section 305 of the said Act is amended

(1) by striking out the words “, and indicate to him the amount of his assessment for each of his establishments” in the third and fourth lines of the first paragraph;

(2) by inserting the words “and the contents” after the word “transmission” in the third line of the second paragraph.

21. Section 307 of the said Act is amended

(1) by inserting the words “not more than” before the figure “200” in the third line of the first paragraph and before the figure “250” in the fifth line of the first paragraph;

(2) by replacing the words “If the employer has never transmitted such a statement, the Commission may” in the first line of the second paragraph by the words “The Commission may also, where it considers it appropriate,”;

(3) by inserting the words “to be not more than the result obtained” after the word “estimated” in the third line of the second paragraph.

22. Section 308 of the said Act is amended by striking out the words “and the interest on the amount” in the third line.

23. Section 309 of the said Act is repealed.

24. Section 312 of the said Act is amended by replacing the word “activity” in the second line of paragraph 1 by the word “classification”.

25. Section 313 of the said Act is amended by replacing the words “each of the financial records” in the second line by the words “the records”.

26. Section 314.1 of the said Act is repealed.

27. The said Act is amended by inserting, after section 314.2, the following sections :

“314.3. Where an employer is involved in a transaction defined by regulation, the Commission may, in the cases and on the conditions prescribed by the regulation, determine the experience it must take into account in order to reflect the risk to which the workers are exposed following the transaction and assess the employer accordingly in accordance with the special prescribed procedure, if any.

“314.4. The employer involved in a transaction referred to in section 314.3 shall inform the Commission in accordance with the standards prescribed by regulation.”

28. Section 315 of the said Act is amended by replacing the second and third paragraphs by the following paragraph :

“However, the Commission may come to an agreement with the employer on special terms and conditions of payment of his assessment.”

29. Section 317 of the said Act is amended by replacing the first two paragraphs by the following paragraph :

“317. The Commission may prescribe, by regulation, the circumstances in which, time within which and conditions subject to which it may re-determine the classification, the imputation of the cost of benefits and the assessment, penalty and interest payable by an employer, at a higher or lower level, as well as the standards applicable to the re-determination.”

30. Section 318 of the said Act is amended

(1) by replacing the word “establishment” in the first line of the first paragraph by the word “employer”;

(2) by striking out the words “of the establishment” in the third line of the first paragraph.

31. Section 319 of the said Act is amended

(1) by replacing the words “the aggregate of” in the second line by the words “5% of the assessment he should have paid”;

(2) by striking out paragraphs 1 and 2.

32. Section 320 of the said Act is repealed.

33. Section 323 of the said Act is replaced by the following section:

“323. The employer and the Commission are required to pay the interest fixed by regulation in the cases and subject to the terms and conditions prescribed.

The rates of interest shall be fixed according to the rules established by the regulation which may provide for the capitalization of the interest.”

34. Section 326 of the said Act is amended

(1) by replacing the words “and post it to the account of the establishment in which the worker held his employment at the time of the accident” in the second, third and fourth lines of the first paragraph by the words “suffered by a worker while in the employ of the employer”;

(2) by inserting the words “, on its own initiative or on the application of an employer,” after the word “also” in the first line of the second paragraph;

(3) by adding, after the second paragraph, the following paragraph:

“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.”

35. Section 329 of the said Act is amended

(1) by inserting the words “, on its own initiative or on the application of an employer,” after the word “may” in the second line;

(2) by adding the following paragraph:

“Any application under the first paragraph must be filed in writing by the employer before the expiry of the third year following the year of the employment injury, and state the reasons for the application.”

36. The said Act is amended by inserting, after section 330, the following section :

“**330.1.** For the purposes of this division, the cost of benefits includes the cost of the services of a health professional designated by the Commission under Division I of Chapter VI.”

37. The said Act is amended by inserting, after section 331, the following division :

“DIVISION VII

“INSPECTION

“**331.1.** The Commission or a person it authorizes to carry out an inspection may, for the purposes of Chapter IX or X, enter at any reasonable time any place of work or any establishment of an employer. The Commission or the person may then require, for examination or reproduction of extracts, any relevant book, report, contract, file, account, register, recording, record or document.

A person having custody, possession or control of the documents referred to in the first paragraph shall communicate them to the person carrying out an inspection and facilitate the person’s examination of such documents.

“**331.2.** No person may hinder an inspection.

“**331.3.** The person carrying out the inspection shall, on request, identify himself and produce the certificate issued by the Commission attesting his capacity.”

38. Section 345 of the said Act is amended by replacing the words “and third paragraphs” in the third line by the word “paragraph”.

39. The said Act is amended by inserting, after section 357, the following section :

“**357.1.** A transaction referred to in section 314.3 does not revive rights to review or rights of contestation otherwise extinguished.

No employer who is a member of a group of employers having entered into an agreement under section 284.2 may apply for a review of or contest a decision concerning the worker of another employer of the group.”

40. Section 358 of the said Act is amended by adding, after the second paragraph, the following paragraph :

“No person may apply for the review of the Commission’s decision to accept or refuse to enter into an agreement under section 284.2.”

41. The said Act is amended by inserting, after section 362, the following section :

“**362.1.** The Commission may, however, take into account, for the purpose of establishing the assessment of an employer for a year, any compensation for bodily injury or any amount paid as a death benefit under sections 98 to 100, the second paragraph of section 102 and sections 103 to 108 and 110 even though the decision granting such compensation or benefit is not final.”

42. Section 364 of the said Act is amended

(1) by replacing the words “, increases the amount of a benefit or causes the employer to be reimbursed, the Commission shall pay to him the interest accrued” in the third and fourth lines of the first paragraph by the words “or increases the amount of a benefit, the Commission shall pay to the beneficiary the interest accrued from the date of the claim.”, and by striking out subparagraphs 1 and 2 of that paragraph ;

(2) by striking out the words “, in the case referred to in subparagraph 1 of the first paragraph,” in the second and third lines of the second paragraph.

43. Section 365 of the said Act is amended by adding, at the end, the following paragraph :

“This section does not apply to a decision rendered under Chapter IX.”

44. Section 454 of the said Act is amended

(1) by inserting, after subparagraph 2 of the first paragraph, the following subparagraph :

“(2.1) determining, for the purposes of section 160, the standards and tables of personal home assistance and providing for the method of annual reevaluation of the sums of money fixed therein;” ;

(2) by inserting, after subparagraph 4.1 of the first paragraph, the following subparagraphs :

“(4.2) determining the framework within which section 284.2 is to apply for the purposes of the agreements provided for therein ;

“(4.3) prescribing special standards applicable to the statements of wages required of the employer in Division II of Chapter IX. Those standards may vary according to the categories of employers the Commission determines;”;

(3) by replacing the words “economic activity” in the first line of subparagraph 5 of the first paragraph by the word “classification”;

(4) by inserting, after subparagraph 5 of the first paragraph, the following subparagraph:

“(5.1) determining, for the purposes of section 298, the rules for classification of employers into units; those rules may vary according to the categories of employers the Commission determines;”;

(5) by replacing the word “activity” in the second lines of subparagraphs 6 and 8 of the first paragraph by the word “classification”;

(6) by striking out the words “, according to the assessment applicable to an employer under section 305,” in the first and second lines of subparagraph 11 of the first paragraph;

(7) by replacing the words “cet employeur” in the second line of subparagraph 11 of the first paragraph of the French text by the words “l’employeur”;

(8) by striking out subparagraph 12 of the first paragraph;

(9) by inserting, after subparagraph 12 of the first paragraph, the following subparagraphs:

“(12.1) defining the transactions referred to in section 314.3 and prescribing the cases, terms and conditions for the determination of the experience of the employer involved in such a transaction and prescribing special assessment procedures applicable to the employer;

“(12.2) determining the standards according to which the employer involved in a transaction referred to in section 314.3 is to inform the Commission;

“(12.3) determining the circumstances in which, time within which and conditions subject to which the Commission may re-determine the classification, the imputation of the cost of benefits and the assessment, penalty and interest payable by an employer, at a higher or lower level, as well as the standards applicable to the re-determination;

“(12.4) determining the cases in which and the conditions subject to which two or more employers may apply to form a group for the establishment of personalized rates and prescribing special procedures for calculating their rates. The conditions may vary according to the categories of employers the Commission determines;”;

(10) in subparagraph 13 of the first paragraph,

(1) by striking out the words “the personalized rate or” in the third line ;

(2) by inserting the words “and prescribing special procedures for the calculation of the adjustment. The conditions may vary according to the categories of employers the Commission determines” after the word “adjustment” in the third line ;

(11) by replacing subparagraph 15 of the first paragraph by the following subparagraph :

“(15) determining, for the purposes of section 323, in what cases and subject to what terms and conditions the Commission or the employer is required to pay interest, the rules for the determination of the applicable rates of interest and the terms and conditions of payment of the interest. The regulation may provide for the capitalization of the interest. The standards adopted under this subparagraph may vary according to the categories of employers the Commission determines.”;

(12) by replacing the words “and 9” in the first line of the second paragraph by the words “, 9, 12.1, 12.4 and 13”;

(13) by replacing the words “or the retrospective adjustment” in the third line of the second paragraph by the words “, the retrospective adjustment or the experience of an employer”;

(14) by adding, after the second paragraph, the following paragraph :

“In addition, the Commission may, in exercising the regulatory powers provided for in subparagraphs 7 and 9 of the first paragraph, provide for rules to ensure an equitable apportionment of the assessments among the employers subject to a method for fixing the assessment or among employers subject to the different methods for fixing the assessment.”

45. Section 455 of the said Act is replaced by the following section :

“455. Draft regulations adopted by the Commission under subparagraphs 1, 2, 3 to 4.2, 12.1 to 12.3 and 14 of the first paragraph of section 454 shall be submitted to the Government for approval.

Notwithstanding section 17 of the Regulations Act (chapter R-18.1), any regulation made under subparagraphs 5 to 13 and 15 of the first paragraph of section 454 comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date fixed therein.”

46. Section 464 of the said Act is amended by inserting the words “an inspection,” after the word “inquiry,” in the third line.

ACT RESPECTING OCCUPATIONAL HEALTH AND SAFETY

47. Section 247 of the Act respecting occupational health and safety (R.S.Q., chapter S-2.1) is amended by replacing the words “sections 249 and 250” in the third line of the first paragraph by the words “section 250”.

48. Section 249 of the said Act is repealed.

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

49. Sections 308, 309, 314.1, 315, 319, 320, 323 and 364 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) and the regulations under subparagraphs 12, 14 and 15 of the first paragraph of section 454 of the said Act as they read on (*insert here the date preceding the date of coming into force of section 33*) continue to apply for the purpose of determining the interest accrued to that date.

50. The Commission de la santé et de la sécurité du travail shall pay no interest to the employer pursuant to section 364 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) as it read on (*insert here the date preceding the date of coming into force of section 42*) where the reimbursement of assessments results from a modification of the imputation of the cost of benefits, except in the case of the application of section 314.1 of the said Act.

The first paragraph applies to a reimbursement made on or after 14 November 1996.

51. The third paragraph of section 454 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001), as enacted by paragraph 14 of section 44, is declaratory.

52. For the purpose of fixing the personalized rate of an employer and of re-determining the rate pursuant to the Regulation respecting personalized rates, approved by Order in Council 260-90 (1990, G.O. 2, 587), the words “cost of the benefits due by reason of industrial accidents occurring and occupational diseases reported during the year for which the ratio is determined and imputed to the employer during that year and, where applicable, during the other two years before the year preceding the assessment year” mean

(1) benefits due by reason of industrial accidents occurring and occupational diseases reported during the year for which the ratio is determined, paid by the Commission de la santé et de la sécurité du travail during that year and, where applicable, during the other two years preceding the year which precedes the year of assessment, and imputed to the employer during that period;

(2) benefits due by reason of industrial accidents occurring and occupational diseases reported during the year for which the ratio is determined, paid by the Commission during that year and, where applicable, during the other two

years preceding the year which precedes the year of assessment, and imputed to the employer after that period ;

(3) corrections made to the benefits due by reason of industrial accidents occurring and occupational diseases reported during the year for which the ratio is determined, paid by the Commission during that year and, where applicable, during the other two years preceding the year which precedes the year of assessment, and imputed to the employer during or after that period, whether those corrections are imputed to the employer during or after that period.

53. For the purpose of making the retrospective adjustment of the employer's annual assessment and of re-determining the adjustment pursuant to the Regulation respecting retrospective adjustment of the assessment, approved by Order in Council 262-90 (1990, G.O. 2, 604), the words "cost of the benefits due by reason of industrial accidents occurring and occupational diseases reported during that year and imputed to the employer during that year and the two following years" mean

(1) benefits due by reason of industrial accidents occurring and occupational diseases reported during the assessment year, paid by the Commission de la santé et de la sécurité du travail during that same year and the following two years, and imputed to the employer during that period ;

(2) benefits due by reason of industrial accidents occurring and occupational diseases reported during the assessment year, paid by the Commission during that same year and the following two years, and imputed to the employer after that period ;

(3) corrections made to the benefits due by reason of industrial accidents occurring and occupational diseases reported during the assessment year, paid by the Commission during that year and the following two years and imputed to the employer during or after that period, whether those corrections are imputed to the employer during or after that period.

54. For the purpose of computing the abatement or additional assessment and the new computation pursuant to the Regulation respecting the system of merit or demerit rating for assessing an employer, approved by Order in Council 1628-86 (1986, G.O. 2, 2658), the words "sum of disbursements attributed to an employer during the year and during the following two years for employment injuries occurring or declared during that base year" mean

(1) benefits for employment injuries occurring or reported during that reference year, paid by the Commission de la santé et de la sécurité du travail during that year and during the following two years, and imputed to the employer during that period ;

(2) benefits for employment injuries occurring or reported during that reference year, paid by the Commission during that year and the following two years, and imputed to the employer after that period ;

(3) corrections made to the benefits due for employment injuries of the reference year, paid by the Commission during that year and during the following two years, and imputed to the employer during or after that period, whether the corrections are imputed to the employer during or after that period.

55. Sections 52 to 54 apply to every notice of assessment issued from 14 November 1996.

Notwithstanding the first paragraph, where a final decision of a court rendered following a contestation by the employer of a notice of assessment issued before 14 November 1996 states that a benefit may not be used for the purpose of establishing the assessment of that employer, the Commission de la santé et de la sécurité du travail shall not, in such a case, use that benefit for the purpose of establishing the assessment of that employer.

56. The Commission de la santé et de la sécurité du travail may, from 23 December 1996, require of employers that they make available such information as is necessary for the implementation of the regulations referred to in subparagraphs 4.3 and 5.1 of the first paragraph of section 454 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) as enacted by paragraphs 2 and 4 of section 44.

57. The provisions of paragraph 12 of section 44 apply to subparagraphs 12.1, 12.4 and 13 of the first paragraph of section 454 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001), as enacted by paragraphs 9 and 10 of section 44, from the date on which they come into force.

58. The provisions of this Act come into force on the date or dates to be fixed by the Government, except those of sections 1 to 3, 5 to 7, section 9 insofar as it enacts section 284.1 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001), section 21, paragraphs 2 and 3 of section 34, sections 35 to 37, paragraphs 1, 12 and 14 of section 44, sections 45 and 46 and sections 49 to 58, which come into force on 23 December 1996, and sections 47 and 48 which come into force on 31 March 1997.