



# Information Bulletin

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## Overhaul of Québec labour standards: A bill is introduced!

On March 20, 2018, the Québec government introduced Bill 176, *An Act to amend the Act respecting labour standards and other legislative provisions mainly to facilitate family-work balance*, in the National Assembly.

Among other matters, the bill purports to amend the *Act respecting labour standards* (LSA) with respect to:

- Disparity of treatment
- Annual leave with pay
- Absences owing to sickness, organ or tissue donation, accident, domestic violence or a criminal offence
- Leave for family or parental matters

Below, we provide further information on the amendments that are of significant interest to pension and group insurance plan sponsors.

## Disparity of treatment

Last December, the Québec government announced its intention to prohibit pension and group insurance plan clauses that allow disparity of treatment based on date of hire (disparity of treatment clauses).

As expected, the bill introduces an amendment to section 87.1 of the LSA, to add an additional paragraph at the end of the section, which states that:

“Any distinction made solely on the basis of a hiring date, in relation to pension plans or other employee benefits, that affects employees performing the same tasks in the same establishment is also prohibited.”

With respect to pension plans and other employee benefits (e.g., group insurance), the new paragraph seems to completely prohibit any difference in treatment based solely on date of hire, even if it can be shown that a plan offered to new employees is just as advantageous as a plan offered to employees with more seniority. In our opinion, the bill could be more flexible on this point.

The wording of the new paragraph does not refer to the concept of “a condition of employment less advantageous than that which is applicable to other employees” that is used in the first paragraph of the section with respect to other matters (e.g., wages).

The new prohibition would not affect all disparity of treatment clauses. The bill’s transitional provisions state that the new paragraph specific to pension plans and other employee benefits “*does not apply to a distinction made solely on the basis of a hiring date and existing on (insert the date that precedes the date of coming into force of section 32 of this Act).*”

Under the bill’s provisions, the effective date for section 32 (the section of the bill that introduces the change to LSA section 87.1) is the date the bill receives assent, a date that has not yet been stated because it is in the future.

In other words, from the bill’s transitional provisions, it seems that the new prohibition would not affect disparity of treatment clauses that are in place the day before the law passes. The bill would only prohibit new disparity of treatment clauses.

In addition, the bill includes a complaints’ process and potential recourses in the event of contravention of the new prohibition.

## Annual leave with pay

The bill provides that employees who are credited with three years of uninterrupted service with the same employer are entitled to a minimum of three consecutive weeks of annual leave. Currently, employees must have five years of uninterrupted service with the same employer to be entitled to this amount of annual leave. It is proposed that this change will come into effect on January 1, 2019.

### ***What is a disparity of treatment based on date of hire?***

Essentially, it means that, based solely on date of hire, an employee is offered a less advantageous working condition than other employees doing the same tasks at the same establishment. The LSA already prohibits this for wages and some other labour standards.

However, there is currently no prohibition for pension and group insurance plans.

## Absences owing to sickness, organ or tissue donation, accident, domestic violence or a criminal offence

The bill adds domestic violence to the existing grounds for leave for sickness or accident. An employee may therefore be absent from work for a period of not more than 26 weeks over a period of 12 months due to sickness, organ or tissue donation for transplant, accident or domestic violence of which the employee has been a victim<sup>1</sup>. It is proposed that this change will come into effect on the date the bill receives assent.

The bill also specifies that the two first days of leave taken annually shall be remunerated. Employees have this new right once they have been credited with three months of continuous service, even if they were absent previously. Note that the three-month continuous service requirement to be entitled to the 26-week leave has been eliminated. It is proposed that this change will come into effect on January 1, 2019.

During this leave, including the unpaid portion of leave, the LSA's rules on maintaining employee benefits continue to apply. Employees may opt to keep participating in the pension and group insurance plans offered by the employer subject to regular payment of the contributions payable (in which case, the employer must also pay its contributions).

## Leave for family or parental matters

Under the LSA, employees may be absent from work for specific family or parental purposes, in particular, to care for various family members. In some cases, the bill specifies that the employee can be absent to care for people who are not currently covered by the relevant provisions of the LSA. The bill introduces a broader notion of the term "relative," in some cases adding "a person for whom the employee acts as a caregiver" (in the meaning given to it by the bill). It will thus be important for employers to refer to the specific provisions relevant to each type of absence. It is proposed that these changes will be effective on the date the bill receives assent.

The bill also amends the maximum length of certain absences. The table below summarizes the main changes in this regard. It is proposed that these changes will be effective on the date the bill receives assent.

Note that some of the changes will provide for better consistency with the caregiver and compassionate care benefits now provided by the federal Employment Insurance program.

Absences	Maximum period of absence stipulated in the bill
Absence of employees when they must stay with a relative or a person for whom they act as caregiver because of a serious illness or serious accident.	Employees may be absent from work for a period of not more than 16 weeks over a period of 12 months. This period is extended to not more than 36 weeks where the person being cared for is a minor child (the current period is at most 12 weeks over a period of 12 months).
Absence of employees when they must stay with a relative, other than a minor child, or a person for whom they act as caregiver because of a serious and potentially mortal illness, attested by a medical certificate. The bill proposes to add this provision to the LSA.	Employees may be absent from work for at most 27 weeks out of a 12-month period. The LSA already stipulates that if an employee's minor child has a serious and potentially mortal illness, attested by a medical certificate, the employee is entitled to an extension of the absence, which shall end at the latest 104 weeks after the beginning thereof.
Absence of an employee whose minor child has gone missing.	The employee may be absent from work for at most 104 weeks (currently, the maximum period is 52 weeks).
Absence of an employee due to the death of a minor child. The bill proposes to add this provision to the LSA.	The employee may be absent from work for at most 104 weeks.
Absence of an employee because his spouse, father, mother or adult child commits suicide.	An employee may be absent from work for at most 104 weeks (the current period is a maximum of 52 weeks, and the absence does not apply to the suicide of the employee's father or mother).

For the absences listed in the table, above, the LSA still stipulates<sup>2</sup> that employee participation in the employer's group insurance and pension plans is maintained during the period of absence, subject to the employee's regular payment of his share of the required contributions. The employer must pay its usual share if the employee makes his contributions.

The bill also includes changes with respect to certain types of family or parental leave.

For example, it introduces the new concepts of "relative" and "caregiver" with respect to an employee absence to fulfil obligations pertaining to the care, health or education of some relatives. The annual 10-day limit on absences remains, but the bill stipulates that two days are paid if the employee has three months of continuous service, unless the employee has already received two days of paid leave for illness, accident, etc. (see above). In other words, employers are not required to remunerate employees for more than a total of two days per year for these two types of absence. It is proposed that these changes with respect to the two days of paid leave will come into effect on January 1, 2019.

Another example is in the case of a relative's death. The LSA currently provides that an employee is entitled to one day of paid leave and four unpaid days in the event of the death or funeral of a spouse, child, spouse's child, or father, mother, brother or sister. The bill amends this by adding an additional day of paid leave (for a total of two paid days), and reduces the unpaid leave to three days. The total permitted absence would still be five days, but the distribution of paid and unpaid leave would change. It is proposed that this change will come into effect on January 1, 2019.

## Conclusion

There are further stages in the legislative process before the bill becomes law. We understand that the bill will be subject to consultation. It will be important to monitor the detailed study stage, to see if changes are made to some of the bill's provisions.

We will therefore be keeping a close eye on the progress of the bill.

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## Footnotes

1. LSA section 79.1 also allows an employee to be absent for at most 104 weeks due to serious bodily injury during or resulting directly from a criminal offence that renders the employee unable to hold his regular position.
2. In section 79.16 and the first paragraph of section 79.3.

# Contact information

Should you wish additional information on this topic, please contact your local Aon consultant, or send an email to [info@aonhewitt.com](mailto:info@aonhewitt.com).

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