

Reviewing Labour Standards: a Collective Challenge

Consultation Paper (Summary)

INTRODUCTION

The *Act Respecting Labour Standards* was adopted in 1979. It was extensively amended in 1990 and then afterwards on several occasions in order to better protect the working conditions for specific categories of employees, to establish more equity between employees or to correct difficulties in the application of existing standards. However, in spite of the importance of the occasional amendments made to the Act over the last few years, they were generally designed to address only specific problems. For example, this included the reduction of the standard workweek, child labour, or more recently, the prohibition of differences in treatment, also called “orphan clauses”.

THE ACT RESPECTING LABOUR STANDARDS AND GOVERNMENT POLICIES

The proposed review takes into consideration main government policies that were socially advocated. The amendments to the Act that are being considered improve the social security net and also contribute in various ways to the fight against poverty and simply being “left out”. Moreover, the family policy that was announced in 1997 leaves considerable leeway for reconciling work and family responsibilities. Day care services and the Quebec policy of parent insurance are definitely the heart of this policy. However, in spite of the importance of these measures, they only concern parents who give birth to or adopt a child. It is more than relevant to have new provisions that will enable workers to reconcile their work with the needs of an older child and other close relatives. These measures will help women more because of the fact that in the vast majority of cases, it is still they who take care of children and close or elderly relatives. Youth policy also underlines the necessity of reconciling family life with studies and work.

In spite of this, review of the *Act Respecting Labour Standards* must take into consideration the North American economic context in which Quebec evolves. As well, review of the *Act Respecting Labour Standards* must take into consideration government objectives for increasing investment and creating jobs.

GOVERNING PRINCIPLES FOR REVIEW OF THE ACT

First Principle

Review of the *Act Respecting Labour Standards* must assure minimum working conditions for all salaried employees.

The main goal of the *Act Respecting Labour Standards* is to assure minimum working conditions for all salaried employees. The fact that this law of public order applies to all, underlines society’s desire to protect all workers.

Second Principle

Review of the *Act Respecting Labour Standards* must reflect the improvement in working conditions in force in businesses.

Analysis of working conditions that apply in businesses enables identifying employees' and employers' new preoccupations.

Third Principle

Review of the *Act Respecting Labour Standards* must further encourage reconciling work with family responsibilities and personal life.

Efforts must continue so that employees assume their responsibilities concerning their children and other close relatives.

Fourth Principle

Review of the *Act Respecting Labour Standards* must encourage better respect for its provisions and facilitate its application.

The *Commission des normes du travail* supervises the implementation and the application of the Act. However, certain provisions of the Act are misunderstood, and review of the Act provides a chance to draft them in a clearer fashion in order to assure that they are better respected.

The amendments considered are grouped under the following four themes:

- Broadening general application of the Act;
- Reconciling work with family responsibilities and personal life;
- Protecting salaried workers;
- Guaranteeing payment of minimum wage.

BROADENING GENERAL APPLICATION OF THE ACT

Agricultural Workers

The Actual Situation

Several categories of workers that are excluded from application of the Act are identified as being in the agricultural sector. The vast majority of these agricultural workers are excluded from the application of the minimum wage, the regular workweek, and their weekly rest period can be postponed to the following week. On the other hand, even if they have a theoretical right to paid annual leave, because of the fact that the employer is generally not required to pay minimum wages, it is practically impossible to establish a claim.

Even though there was at one time certain justification for excluding agricultural workers, considering that the business was of a family nature, this is a bygone time. Apart from the agricultural sector, small and medium businesses, whether or not they are of a family type and even if they have only one worker, are subject to the Act. Requirements of competitiveness may not be invoked in order to deprive workers of the minimum wage and other minimum working conditions. It's all about treating agricultural workers and all employers equally before the law.

Withdrawing exceptions concerning agriculture may also help this sector, especially the field of horticulture, in attracting a larger number of workers. This field has had major labour recruitment and turnover problems for a number of years.

Amendments Considered

It would be possible to give agricultural workers the right to have minimum wages and to apply to them the other provisions of the Act concerning wages. It would also be possible to prohibit postponing the weekly rest day to the following week unless the worker agrees. As well, for persons employed on a daily basis, the indemnity for annual leave could be paid at the same time as salary is paid.

Statutory Holidays with Pay

The Actual Situation

The object of the proposed amendments is to give certain atypical workers the advantage of paid holidays either by giving them a day off with pay or a compensatory holiday.

The Act as it is now provides for seven statutory holidays. If Easter Monday is counted, four of these holidays fall on a Monday. For a worker to have compensation, the holiday has to fall on a working day. This is easy to apply when the worker has a "standard" job of indeterminate duration. Because of the various status of numerous jobs (temporary, occasional, on call, etc.) and of the wide ranging work schedules for these jobs, this reference is less and less relevant, especially for people who work on a timetable that is not regular from Monday to Friday. As well as the difficulty in applying these criteria, especially with the extension of working hours and days in the field of retail sales and personal services, this standard results in people who don't have a conventional timetable often having no right to a paid holiday or a compensatory holiday.

On the other hand, a worker must be credited with 60 days of uninterrupted service in order to have the right to a holiday or compensation, that often prevents new workers from having any.

Amendments Considered

It would be possible to do away with the notion of "working day" in order to establish a worker's admissibility to a paid holiday or compensatory holiday and to eliminate the criterion of uninterrupted service.

When amending the section of the Act concerning holidays, it would be useful to establish a simple rule for the Easter holiday and to specify that only Good Friday is a holiday. The new amendments suggested to the *Act Respecting Labour Standards* concerning compensation for holidays could be used for the National Holiday (June 24) according to the same conditions as mentioned above.

RECONCILIATING WORK WITH FAMILY RESPONSIBILITIES AND PERSONAL LIFE

Absence Due to Illness or Accident

The Actual Situation

The Act prohibits an employer from dismissing, suspending or transferring an employee who has three months of uninterrupted service on the grounds that the employee was absent because of illness or an accident for a maximum period of seventeen weeks during the last twelve months. However, the Act does not specifically establish the right to miss work because of illness or accident. Such an ambiguity creates confusion between the parties. Specific acknowledgement of this right would simplify their relations.

The seventeen-week period is sometimes insufficient. Absence due to illness such as cancer or heart illness or even psychological troubles that are the main health problems today, often require an absence from work that is longer.

Amendments Considered

An employee's right to be absent without pay because of illness or an accident for twenty-six weeks at the most out of a period of twelve months could become a labour standard.

Absence Due to Parental or Family Reasons

The Actual Situation

The Act as it is now stipulates that an employee may be absent for five days per year, without pay, to fulfil obligations relating to the care, health or education of his minor child, in cases where his presence is required due to unforeseeable circumstances beyond his control.

Employees who must take care of their child of the age of majority, of their spouse, elderly parents or other close relatives, do not have the same protection in case of absence. The needs of employees who have close relatives who are suffering from serious illness that may even be terminal or those that are seriously injured must also be taken into consideration. They mustn't fear losing their job due to their extended absence from work because they have to be available in such trying situations.

Amendments Considered

The number of days during which an employee may be absent without pay by reason of care requirements for his child, his spouse's child, his spouse, his father or mother or when his presence is necessary because of unforeseen or uncontrollable reasons, could be increased to ten per year.

As well, it could be possible to enable an employee who has three months of uninterrupted service to be absent without pay for a maximum of twelve weeks over the last twelve months when that employee is required to be present for his child, his spouse's child, his spouse, his father or mother if they have a serious illness or have had a serious accident.

Parental leave

The Actual Situation

The replacement of wages during parental leave is a major factor determining its use. However, parents benefiting from these measures must be sure they can return to their former position at the end of their leave. This is why it's so important to harmonize the *Act Respecting Labour Standards* with the *Employment Insurance Act* and the *Parental Insurance Act*.

In several cases, only minor adjustments are required that would render benefit periods identical and would protect employment. However, significant amendments are required concerning parental leave even if the fact situation seldom takes place. In virtue of the *Act Respecting Labour Standards*, the father or mother of a new-born child as well as a person who adopts a child who has not yet reached the age for compulsory school attendance are admissible to parental leave without pay for a maximum of 52 consecutive weeks. There is therefore no leave for the adoption of an older child even though the *Employment Insurance Act* and the *Parental Insurance Act* provide for the payment of benefits when adopting a child who may be less than eighteen years old. On the other hand, at the end of parental leave that exceeds twelve weeks, instead of returning the employee to his former position, the employer may transfer him to comparable employment. There is no reason that an employee should not return to his former job at the end of parental leave if that job still exists.

Amendments Considered

The *Act Respecting Labour Standards* should protect the employee's job if that employee must be away for the duration of parental leave. The *Act* should enable the employee to return to his former position when he returns to work.

EMPLOYEE PROTECTION

Duration of Work

Extension of Hours of Work

The Actual Situation

In theory, the *Act Respecting Labour Standards* allows employers to require employees to do overtime. However, this prerogative is not absolute. Every employee is entitled to a 24 consecutive hour rest period every week. Twenty-four hours of rest doesn't leave enough time to do anything else except going home, eating, sleeping and taking care of life's daily necessities. Various studies have indicated that overwork may have negative effects on physical and mental health, safety at work as well as on family and social life.

Amendments Considered

The rest period could be established at 32 consecutive hours per period of seven consecutive days. It would also be possible to enact the right to refuse to work after twelve hours per 24 hour period or more than 60 hours per week. However, it would not be possible to exercise this right in the following situations: 1) a danger to life, health or safety of workers or the population, 2) destruction or serious damage to movable or immovable property and 3) the requirement to respect a professional code of ethics. In spite of this, because of the necessity of taking into consideration the wide variety of work schedules in certain sectors of activity such as in paper mills, refineries or aluminium plants where work shifts are often 12 hours long, the right to refuse to work in these sectors of activity could only be invoked after 14 hours of work per period of 24 hours.

Recourse Against Dismissal Not Made for Good and Sufficient Cause

The Actual Situation

An employee credited with three years of uninterrupted service with the same employer and who believes that he has not been dismissed for a good and sufficient cause may file a complaint with the *Commission des normes du travail*. In the field of labour legislation, more than simply checking working abilities, the "probation period" enables forging a relationship based on confidence, and once that relationship is established, it may not be unilaterally terminated without serious grounds. These are the principles that are the basis of the recourse mentioned in this section. This three-year period prevents many workers from having recourse against unfair dismissal.

Amendment Considered

It would be possible to reduce the duration of the required period to two years in order to exercise this recourse.

Recourse Against Prohibited Practices

The Actual Situation

We mentioned earlier the possibility of specifically enacting the right for an employee to be away on leave by reason of illness or accident. It was also proposed to increase an employee's right to be away on leave in order to take care of close relatives other than his minor child. It will obviously be necessary to match an employee's recourse with these new rights, but also to improve protection for employees who undertake recourse against prohibited practices.

The Act provides that after four consecutive weeks of absence by reason of illness or accident, the employer may instead of letting the employee return to his former position, transfer him to a comparable employment. However, an employee cannot be blamed for illness or an accident, and just like what was suggested earlier for parental leave, there is no reason that an employee should not return to his former job if it's still available when the employee returns to work and if that employee is able to do the job.

Amendment Considered

It would be possible to improve protection in the case of recourse against prohibited practices by enabling the employee to return to his former job when he returns to work, if he's able to do the job.

Collective Dismissal

The Actual Situation

The provisions concerning collective dismissal are provided in the *Act Respecting Manpower Vocational Training and Qualification* that was enacted in 1969. This Act is little known by the vast majority of businesses and the general public, and because of that, the possibility of committing offences is increased. As well, the actual provisions provide for no recourse by employees if the employer does not respect minimum periods for giving the collective dismissal notices that are provided for in this Act.

Furthermore, the legislative proposal to integrate in the *Act Respecting Labour Standards* the provisions concerning collective dismissal that are found in the *Act Respecting Manpower Vocational Training and Qualification* would have the effect of rendering the State, as a single employer, subject to these provisions that would affect thousands of civil service employees.

Amendments Considered

On a legislative basis, it would be more appropriate if the new provisions would be included in the *Act Respecting Labour Standards* as is the case with other public administrations. However, these provisions would not apply to civil service employees.

Furthermore, the employer could not unilaterally modify working conditions during the time limit for the notice period for layoff. As it is now, an employer is only prohibited from laying off employees during the notice period. The Act could authorize the *Commission des normes du travail* to claim an indemnity from the employer that would be the equivalent of the amount of salary that the employee would have received during the notice period for collective dismissal.

GUARANTEEING PAYMENT OF MINIMUM WAGE

Basis For Payment

The Actual Situation

The *Act Respecting Labour Standards* enables employers to pay wages on another basis than that of hours worked, for example, using performance as criteria, commissions paid or billing of the work performed. However, this type of payment often results in employees being paid at a rate that is less than the minimum wage.

Amendment Considered

It would be possible for the Act to provide that in spite of any contrary stipulation or agreement, and without having to institute proceedings to have such agreements declared null and void, the employee would be entitled to receive the minimum wage established by the government.

Employees Who Receive Gratuities

The Actual Situation

Since February 1st, 2001, the minimum hourly wage for an employee who usually receives gratuities is \$ 6.25 per hour, while the general rate paid for other employees is \$ 7.00 per hour. This specific rate is therefore \$ 0.75 less than the general rate. Its relative value is 89.3 % of the general rate. The frequency of tipping, that is to say, the number of clients who leave gratuities, is the criterion that enables establishing whether or not an employee usually receives gratuities. However, such an interpretation is too restrictive and is unfair for certain workers in the fast food business, because even if they usually receive tips, the existing rule does not consider the amount of the tip in order to assure the general rate for minimum wages.

Amendments Considered

It would be possible to apply a specific rate only for employees who serve food or drink in places where alcoholic beverages are sold or in restaurants holding a permit to serve ("bring your own wine"). In spite of what has been said above, it would be necessary to specify that the rate applies only if the waiter or waitress receives gratuities that enable him or her to earn wages that are at least equal to the general minimum wage rate.

Payment of Uniforms

The Actual Situation

The Act provides that when an employer requires that employees wear a uniform, the employer must supply it free of charge to an employee who is paid the minimum wage. As well, the employer cannot require an amount of money from an employee for the purchase, use or upkeep of a uniform if this payment causes the employee to receive less than the minimum wage. However, nothing prohibits an employer from requiring that an employee pay for the purchase, use or maintenance of a uniform if by doing so the employee does not receive less than the minimum wage.

Amendment Considered

It would be possible to prohibit an employer from requiring that an employee pay for his uniform if it is distinct and identifies the employee to the employer's business operation and if this uniform is of no practical use for the employee except for work.

Payment of Tools, Travelling and Training Costs Required by the Employer

The Actual Situation

Some employers make certain work equipment or tools compulsory and require that employees pay for purchasing, maintaining or repairing them. This may involve computers, telecommunications equipment, a vehicle, etc. Some such employees earn minimum wages or just a little more. But in fact, if the costs are considered, these employees earn less than the minimum wage.

It has also been noticed that employers do not refund employees for travelling costs, such as transportation, accommodations and meals when employees have to travel outside of their usual workplace. Finally, an employee who has to undergo training at the employer's request whether it is within or outside the workplace is not necessarily refunded for the costs incurred. The Act in its actual state does not permit an employee to claim these amounts spent in the performance of his work.

Amendments Considered

First of all, it could be possible to prohibit an employer from requiring that a minimum wage employee be required to supply equipment, raw materials or merchandise for the performance of a contract. The employer would also be prohibited from requiring that the employee pay for the purchase, the use or maintenance of material resources that would result in the employee being paid less than the minimum wage.

Secondly, the employer could be required to refund the employee reasonable costs incurred in the performance of his functions when travelling at the employer's request (transportation, accommodations, meals), as well as costs related to training that the employee took at the employer's request. This standard would apply to all employees, no matter what their pay level.