

Names	IN	OUT	COMMENTS
CLARKE, SHIRLEY	<input type="radio"/>		
DI PAOLO, LISA	<input type="radio"/>		
DUMAS, PHILIPPE		<input checked="" type="radio"/>	FLU
GAGNON, SUZANNE	<input type="radio"/>		
MORIN, CHARLES	<input type="radio"/>		
NGUYEN, VAN THIEU		<input checked="" type="radio"/>	FLU
SAVARD, HENRIËTE		<input checked="" type="radio"/>	FLU
TREMBLAY, BERNARD	<input type="radio"/>		
WAGNER, PÉER	<input type="radio"/>		



Worried about the possibility of a flu pandemic?

Reminder sheet outlining the applicable standards



INFLUENZA PANDEMIC

NOBODY WANTS TO SEE A FLU PANDEMIC OCCUR. HOWEVER, EXPERTS HAVE CONFIRMED THE POSSIBILITY OF THE SPREAD OF A VIRUS THAT COULD BE TRANSMITTED FROM PERSON TO PERSON AND COULD RESULT IN A PANDEMIC. A PANDEMIC WOULD HAVE MAJOR ECONOMIC AND HUMAN REPERCUSSIONS FOR SOCIETY IN GENERAL. UNDERTAKINGS COULD BE AFFECTED BY A DECLINE IN THEIR ACTIVITIES AND A HIGH ABSENTEEISM RATE OF THEIR PERSONNEL.

WITHOUT BECOMING ALARMED, IT IS IMPORTANT TO PREPARE FOR THIS EVENTUALITY. WHAT DO YOU NEED TO KNOW? HOW DO YOU DEAL WITH THE SITUATIONS THAT A PANDEMIC COULD CAUSE? IF AN EMPLOYEE MUST BE ABSENT, WHAT ARE HIS RIGHTS? WHAT CONDITIONS OF EMPLOYMENT APPLY? CAN AN EMPLOYER REQUIRE THAT HIS EMPLOYEES WORK OVERTIME? WHAT ARE THE RESPONSIBILITIES OF AN EMPLOYER WHO MUST SHUT DOWN HIS UNDERTAKING TEMPORARILY?

THE COMMISSION DES NORMES DU TRAVAIL HAS PREPARED THIS REMINDER SHEET WHICH IS INTENDED AS A TOOL TO HELP YOU ANTICIPATE WHAT LABOUR STANDARDS WILL APPLY IN THE VARIOUS SITUATIONS ARISING FROM A PANDEMIC AS WELL AS THE RESPONSIBILITIES THAT EMPLOYERS HAVE TOWARDS THEIR EMPLOYEES.

This reminder sheet is intended for employers whose employees are subject to the Act respecting labour standards, its regulations and the National Holiday Act.

Assuming that there is a pandemic, it is important to consider that some people may not be able to report to work because they are sick or because they must be absent to take care of their children or close relatives. Provisions allow employees to be absent by reason of illness or to meet obligations related to their family.

Absences by reason of illness

An employee who is credited with three months of uninterrupted service is entitled to be absent without pay from work by reason of illness or accident. The total absences must not exceed 26 weeks over a 12-month period. The starting point of this 12-month period is calculated from the date of the first absence. The employee's former position and the related benefits are protected for the duration of his absence.

At the end of the absence, the employee must be reinstated in his former position, with the same benefits, including the wage to which he would have been entitled if he had remained at work. If his former position no longer exists when he returns, the employer must grant him all of the rights and employees that he would have enjoyed at the time the position disappeared.

Absences and leaves for family or parental reasons

The Act respecting labour standards grants the employee a certain number of leaves with and without pay, as the case may be, for events related to his family, notably:

- to meet certain family or parental obligations;
- by reason of the death or funeral of certain members of his family.

The employee must notify his employer of his absence as soon as possible and take the reasonable means at his disposal to limit the taking of the leave and its duration.

<p>Obligations</p>	<ul style="list-style-type: none"> • related to the care, health or education of a child of the employee or a child of his spouse • related to the state of health of the employee's spouse, his father, mother, a brother, a sister or one of his grandparents 	<p>10 days per year without pay This leave may be divided into days at various times during the year. A day may also be divided (into half-days, for example) if the employer consents thereto.</p>
<p>Presence required</p>	<ul style="list-style-type: none"> • with the child of the employee, his spouse, the child of his spouse, his father, mother, the spouse of his father or mother, a brother, a sister or one of his grandparents by reason of serious illness or a serious accident 	<p>A maximum of 12 weeks* without pay over a 12-month period (the employee must have been in the employ of his employer for at least 3 months)</p> <p>The permitted absences must be counted in weeks. The employee can divide the 12-week period into weeks according to his needs.</p> <p>* The absence may be extended if a minor child of the employee has a serious, potentially mortal illness. It ends not later than 104 weeks after the start of the absence.</p>
<p>Death or funeral</p>	<ul style="list-style-type: none"> • of the spouse of the employee, of his child or the child of his spouse, of his father, mother, a brother or a sister 	<p>1 day with pay and 4 days without pay</p>
<p>Death or funeral</p>	<ul style="list-style-type: none"> • of a son-in-law of the employee, a daughter-in-law, one of his grandparents or one of his grandchildren as well as the father, mother, a brother or a sister of his spouse 	<p>1 day without pay</p>

However, by reason of the death or funeral of a member of the family of an employee of certain sectors of the clothing industry, the employee is entitled to a different number of days of absence.

Death or funeral	<ul style="list-style-type: none"> • of the spouse of the employee, of his child or the child of his spouse, of his father, mother, a brother or a sister 	3 consecutive days with pay and 2 days without pay
Death or funeral	<ul style="list-style-type: none"> • of one of his grandparents as well as the father or mother of his spouse 	1 day with pay
Death or funeral	<ul style="list-style-type: none"> • of a son-in-law, a daughter-in-law, one of his grandchildren, as well as a brother or sister of his spouse 	1 day without pay

A pandemic risks having an impact on the operations of undertakings. To maintain critical operations or due to a high absenteeism rate, it may happen that an employer will ask employees to work overtime. Here are the applicable rules.

Overtime

The regular workweek is 40 hours*. The hours worked beyond that period are overtime. They must be paid with a 50% premium (time and a half) of the prevailing hourly wage paid to the employee.

At the employee's request, the employer can replace the payment of overtime with a leave. This leave must be of a duration equal to the overtime worked, increased by 50%. It must be taken in the 12 months following the overtime worked and at a date agreed upon between the employer and the employee.

* The regular workweek is different for some employees. Get in touch with the Service des renoncements or consult the Commission's web site.

Making a note of working hours is important!

It is useful for the employee and the employer to make a note of each hour of work done. That way, it is possible to know how many hours must be paid in overtime. A statement of the hours worked also allows the employee to claim, if necessary, the sums of money that were not paid by the employer.

The staggering of working hours, a possibility for the employer

Assuming that there is a high absenteeism rate, an undertaking could find itself with a reduced staff to maintain its activities. In some situations, an employer may request a staggering of working hours which cannot exceed one year.

If he obtains authorization from the Commission des normes du travail, an employer will be able to stagger working hours over several weeks. To calculate overtime, the employer can use a reference period other than on a weekly basis. However, the average hours worked during the period must be the equivalent of a regular workweek, namely 40 hours.

The case of the XYZ company

The XYZ company obtained authorization to stagger the working hours of its employees over a three-week period. Here is how to determine if the average hours worked during the permitted staggering period is equivalent to the regular workweek, namely 40 hours.

During a period of three weeks, Lucy worked 120 hours broken down as follows:

Week 1		30 hours
Week 2		50 hours
Week 3		40 hours
Hours worked during the three weeks	=	120 hours
÷ number of weeks granted for the staggering of working hours	÷	3 weeks
	=	40 hours

The average hours worked by Lucy during the permitted staggering period is equivalent to 40 hours, namely the regular workweek.

Persons who take care of others, an exception

Persons who take care of others are likely to work more in the event of a pandemic. These employees are protected by the provisions of the Act respecting labour standards. However, their wage rate is not increased by 50% after 40 hours of work.

Persons who take care of others are employees whose exclusive duty is to take care of or provide care to a child or to a sick, handicapped or aged person in that person's dwelling including, where so required, the performance of domestic duties that are directly related to the immediate needs of that person, unless the work serves to procure profit to the employer.

Right to refuse to work

An employee may refuse to work beyond a certain number of hours to limit the duration of work. The total hours calculated from the first hour worked makes it possible to determine if an employee can exercise his right to refuse to work.

The right to refuse to work may be exercised on a daily basis, a weekly basis or both.

1. The right to refuse to work may be exercised on a daily basis:

- for an employee who has a regular schedule, more than 4 hours beyond his regular working hours or more than 14 hours per 24-hour period, whichever period is shorter;
- for an employee whose daily working hours are flexible or non-continuous, more than 12 hours per 24-hour period.

2. The right to refuse to work may be exercised on a weekly basis after:

- more than 50 hours of work per week, except where there is an authorization to stagger working hours;
- more than 60 hours of work for an employee working in an isolated area or in the territory of James Bay.

However, the right to refuse to work cannot be exercised when the effect of such action is to jeopardize the life, health or safety of workers or the public.

Another possible scenario is that the undertaking cannot assign work to its employees or must proceed with lay-offs due to supply or subcontracting problems, for example. Moreover, employees might be called upon to replace absent colleagues, to take training in order to do new work or to travel from one place of work to another. Here is a reminder of the conditions of employment that must be respected.

What must be paid

An employee must be paid:

- when he is at the disposal of his employer at the place of work and he is required to wait for work to be assigned;
- during travel required by the employer;
- during any trial or training period required by the employer.

Moreover, the employer is required to reimburse the employee for the reasonable expenses incurred when, at the employer's request, the employee must travel or take part in training.

An employee who reports to work at the express demand of his employer or in the regular course of his employment and who works fewer than three consecutive hours is entitled to an indemnity equal to three hours' wages at the prevailing rate, increased by tips where applicable.

However, this provision does not apply when a case of superior force (e.g.: a fire) occurs, when the employee is hired for periods of fewer than three hours (e.g.: school bus driver) or when the daily duration of work is planned to be less than three hours by reason of the nature of the work or the conditions of its execution (e.g.: school crossing guards).

Notice of termination of employment

At the time of a lay-off lasting less than six months, an employer is not required to give written notice to employees. He must give a written notice to an employee credited with at least three months of uninterrupted service before terminating his contract of employment or laying him off for six months or more. The length of the notice varies according to the length of uninterrupted service.

Uninterrupted service	Length of notice
3 months to 1 year	1 week
1 year to 5 years	2 weeks
5 years to 10 years	4 weeks
10 years and over	8 weeks

An employer who does not give the notice must pay the employee a compensatory indemnity equal to his regular wages for a period equal to that of the notice to which he was entitled, excluding overtime.

It is hard to predict when a flu pandemic may occur and how long it may last. Despite these uncertainties, employers must make provision for maintaining the conditions of employment of their employees. If such a crisis were to arise, what happens to the annual leave? How is the taking of the annual leave administered? What happens if an employee had to be absent?

Annual leave

The choice of the date of the annual leave is left up to the employer.

Entitlement to the paid annual leave is acquired during a period of 12 consecutive months. This period, known as the reference year, is determined by the employer or by the Act respecting labour standards. In this latter case, it extends from May 1st of the previous year to April 30th of the current year. Annual leaves must be taken in the 12 months that follow the reference year. However, the employer may, at the employee's request, allow the annual leave to be taken, in whole or in part, during the reference year.

The length of the annual leave and the amount of the indemnity vary according to the employee's uninterrupted service. Prior to the start of his annual leave, the employee must receive in one lump-sum his annual leave indemnity, equal to 4% or 6% of the gross wages that he earned during the reference year.

If an employee is absent by reason of illness or accident during the reference year and the effect of this absence is to reduce the annual leave indemnity, he is then entitled to an indemnity equal, as the case may be, to two or three times (depending on the length of his uninterrupted service) the average weekly wages earned during the period worked. If the annual leave is less than two weeks, the employee is entitled to this amount in proportion to the days of annual leave that he accumulated.

It should be recalled that the same provisions apply for employees on maternity or paternity leave. Consult the calculation tool pertaining to the annual leave indemnity on the Commission's web site at www.cnt.gouv.qc.ca.

It is possible to postpone the annual leave to the following year when the employee is absent by reason of illness, accident or for family or parental reasons. Such a postponement is made at the request of the employee, with the employer's consent. If the leave is not postponed, the employer must immediately pay the annual leave indemnity to which the employee is entitled.

The employee must be informed of the date of his annual leave at least four weeks ahead of time.

To make up for the labour shortage, business or store owners could ask young people to work. The Act respecting labour standards provides a framework for work performed by children.

A child must work

An employer is prohibited:

1. from having work performed by a child that is disproportionate to the child's capacity or that is likely to be detrimental to the child's education, health or physical or moral development;
2. from having work performed by a child under 14 without the written consent of the parent;
3. from having work performed during school hours by a child required to attend school;
4. from having work performed by a child subject to compulsory school attendance between 11 p.m. and 6 a.m. on the following day except in the case of newspaper deliveries, or if he does work as a creator or performer in certain fields of artistic production.

Moreover, an employer who has work performed by a child subject to obligatory school attendance must see to it that this child can be at his home between 11 p.m. and 6 a.m. on the following morning, barring exceptions.

If an employee's conditions of employment are not respected, the Act respecting labour standards provides recourses allowing him to assert his rights before the Commission des normes du travail.

Pecuniary complaint

An employee who believes that his employer is not respecting his rights pertaining to labour standards or the other benefits stipulated in the Act (wage, overtime, annual leave indemnity, indemnity for statutory holidays, indemnity for termination of employment, etc.) has one year to file a complaint with the Commission des normes du travail.

Prohibited practice

An employee can file a complaint with the Commission des normes du travail if he believes that he was dismissed, suspended, transferred, or the victim of discriminatory measures or reprisals or any other sanction, notably:

- because he exercised a right arising from the Act respecting labour standards or its regulations;
- because he refused to work beyond his regular working hours to meet certain family or parental obligations.

The time period for lodging a complaint is **45 days**.

An employee may file a complaint for other practices that are prohibited under the Act. Get in touch with the Service des renseignements or consult the web site of the Commission des normes du travail.

Dismissal not made for good and sufficient cause

An employee who is credited with two years of uninterrupted service and who believes that he was dismissed without good and sufficient cause may file a complaint with the Commission des normes du travail in the **45 days** following his dismissal.

Psychological harassment at work

There is also a recourse in case of psychological harassment at work. A non-unionized employee subject to the Act respecting labour standards must file his complaint in the **90 days** following the last incidence of psychological harassment. A unionized employee who has a recourse under his collective agreement, such as a right to file a grievance, must use the stipulated procedure.

To learn more...

Get in touch with the
Service des renseignements
or consult the web site of the
Commission des normes du travail.

Service des renseignements

Montréal area
514 873-7061

Elsewhere in Québec, toll-free
1 800 265-1414

Internet
www.cnt.gouv.qc.ca

This document is provided for information purposes only. For more details, please refer to the Act respecting labour standards and its regulations or get in touch with the Service des renseignements.

In this document, the masculine gender refers to both women and men.
No discrimination is intended.



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