



LAPOINTE ROSENSTEIN
MARCHAND MELANÇON
S.E.N.C.R.L. Avocats

ACT TO MODERNIZE THE OCCUPATIONAL HEALTH AND SAFETY REGIME

March 28, 2022



M^{re} Mathilde Delorme
Lawyer
Labour and Employment



Christophe El-Hamaoui
Law Student

The adoption of the *Act to Modernize the Occupational Health and Safety System*¹ (Quebec) (the "Act") on October 6, 2021, represents the first major update to the *Act respecting occupational health and safety* (Quebec) and the *Act Respecting Industrial Accidents and Occupational Diseases* (Quebec) (AIAOD) in over 35 years. All of the amendments proposed by the Act are being phased in over time and could come into effect at the latest by October 6, 2025.

April 6, 2022, represents a pivotal date in the implementation of this Act, being the date of entering into force of an interim system of prevention and participation mechanisms, which is intended to increase the responsibility of workplaces for health and safety. In anticipation of this date, considerable changes will need to be implemented by a multitude of employers operating in sectors that were previously exempt from such obligations relating to occupational health and safety prevention and participation mechanisms.

This article will discuss the major changes that will affect these employers but does not contain an exhaustive review of all cases.

PREVENTION MECHANISMS

For employers who were not previously required to implement a prevention program, the interim regime introduces a preparatory step that will allow them to set the stage for the implementation of future prevention programs or action plans.

The obligation to implement a prevention program in accordance with the *Act respecting occupational health and safety* was already incumbent on employers of establishments that are part of priority groups 1, 2 or 3². These employers will have to maintain their prevention programs until the regulatory provisions concerning prevention mechanisms in establishments come into force.

This obligation will soon be extended to all employers whose establishment has twenty or more workers in a given year, including loaned or leased labour. Such employers will have to document in writing the

¹ Bill 59, 2021, chapter 27.

² [Priority groups](#)

identification and analysis of risks to the health and safety of workers by April 6, 2022, until the regulatory provisions come into force.

RISK IDENTIFICATION³

All employers in priority groups 4, 5 and 6 will now have to identify, **in writing**, the health and safety risks to their employees.

The risks can be grouped into six main categories: (1) chemical risks, (2) biological risks, (3) physical risks, (4) ergonomic risks, (5) psychosocial risks and (6) safety risks.

In the workplace, several actors can be involved in the identification of risks: workers, the health and safety liaison officer, the health and safety representative, the members of the health and safety committee, and the employer or its representatives.

Worker participation is essential in identifying hazards. Workers must contribute to prevention efforts by complying with safety rules, reporting hazards in their workplace and suggesting ways to improve their health, safety and physical and psychological well-being.

RISK ANALYSIS

All employers with 20 or more workers in an establishment, regardless of the group to which they belong, must conduct a hazard analysis following the identification and prioritization of hazards.

The risk analysis is done by evaluating the importance of the risk, its severity, as well as the probability of its occurrence, with the ultimate goal of prioritizing the risks and ensuring adequate follow-up.

Several risk analysis methods exist⁴.

Once the risks have been identified and analyzed, they must be prioritized in order to establish the order of risks for which prevention measures must be implemented:

- Hazards that can lead to serious and immediate consequences (or the most dangerous situations).
- Those that you and your workers consider most important.
- Those at the top of the list ranked according to the probability of an accident or incident occurring and their possible consequences.

Once the risks have been identified, analyzed and prioritized, preventive measures must be put in place to correct and control these risks.

³ The CNESST provides the public with a risk identification tool, accessible through the following link: [Risk Identification](#).

⁴ [CNESST risk analysis methods](#). See in particular: Information capsule Identifying, correcting and controlling risks: [CNESST capsule](#) ; ISO standard 31010: Risk management: Risk assessment techniques: [ISO standard](#) ; CSAZ1002 standard: Identification and elimination of hazardous phenomena and risk assessment and control.

Obligations of an employer with fewer than 20 workers

The obligation to document the risk analysis in writing does not apply to an employer with fewer than 20 workers. For employers with fewer than 20 workers, prioritization is the next step after hazard identification.

PARTICIPATION MECHANISMS

Participation mechanisms are the measures that employers must put in place to encourage worker involvement in the development and management of prevention mechanisms. Previously, only employers in priority groups 1 and 2 had to take these participation mechanisms into account. However, with the coming into force of the Act, all Québec employers will now be required to take them into account. The rules regarding the implementation of these mechanisms differ according to the size of the employer.

HEALTH AND SAFETY COMMITTEE

The Health and Safety Committee ("HSC") is one of the participation mechanisms. It is an internal and joint mechanism made up of employer and worker representatives.

All employers with 20 or more employees will be required to form a HSC (or retain the existing one). The employer and workers must sign an agreement to establish the creation of the HSC and number of representatives on the committee.

A HSC formed under the Occupational Health and Safety Committees Regulation must have at least one employer member and no more than eleven worker members. There may be as many employer members on the committee as there are worker members. Accordingly, the maximum number of members on the HSC should be 22, with up to 11 members representing the employer and up to 11 members representing the workers.

The mission statement of the HSC should be determined at the time of its creation and known to all members. It must specify the objectives that will guide the activities of the HSC. There is no specific term of office for members. However, the term should be long enough for members to feel comfortable in their roles. The frequency of HSC meetings is determined by agreement between the employer and the workers. In the absence of an agreement, the interim plan provides for the number of meetings to be based on the number of workers in the establishment.

A HSC has a number of prevention-oriented functions that are governed by the *Regulation respecting occupational health and safety committees*. In particular, it must keep a register of accidents, incidents and first aid, receive notices of accidents and investigate events that have caused or could have caused a work accident or occupational disease, and submit recommendations to the employer and the CNESST.

The HSC also plays a role in prevention by analyzing the situation and proposing solutions to the main occupational health and safety problems.

For employers who have less than twenty workers in their establishment, this measure is optional.

HEALTH AND SAFETY REPRESENTATIVE

The Act also includes changes to the health and safety representative.

Previously, this function was only mandatory for establishments in priority groups 1 and 2. From now on, a health and safety representative must be designated by the workers in all establishments of twenty workers or more, before April 6, 2022.

The role of the health and safety representative is to inspect the workplaces, which means that, through a careful examination, he identifies and reports the risks that may cause occupational injuries in the establishment. He then makes recommendations that he believes to be appropriate to the HSC and puts them in writing.

As for the appointment of this person, it is done by ballot when the workers of an establishment are not represented by a certified association. The vote is held at a meeting called for this purpose by a worker of the establishment. Notice of the ballot and notice of the nomination meeting must be posted in the establishment at least 5 days before the meeting to allow all workers to participate.

Of the workers nominated for this role, those who receive the most votes shall be designated as representatives. In a remote working environment, workers may post notice of the ballot and nomination meeting using other mechanisms, including a virtual posting. The meeting may also be held virtually to allow all workers to be present.

The person who performs the role of health and safety representative is protected by the *Act respecting occupational health and safety*. The employer may not dismiss, suspend, or remove the person from his or her position because he or she performs such duties. The employer may not discriminate, retaliate, or impose any other penalty on the person for the same reason.

HEALTH AND SAFETY LIAISON OFFICER

Employers with fewer than 20 workers, who are not required to establish a HSC or appoint a health and safety representative, will now be required to designate a health and safety liaison officer.

Similar to the health and safety representative, the liaison officer must act as the bridge between the employer and the employees for all matters related to occupational health and safety. The liaison officer will also be responsible for making recommendations to the employer regarding the identification of hazards in the workplace.

As for the appointment of this person, it is done in the same way as the appointment of the health and safety representative, i.e., by ballot if the workers are not unionized or as determined by their association if they are unionized.

MULTIPLE ESTABLISHMENTS OF THE SAME NATURE

Employers with several establishments with similar activities and twenty or more workers may combine some or all of their establishments to promote a global approach. However, certain conditions must be met in order to exercise this right.⁵

This approach allows employers with several establishments to document a single identification and analysis of risks. In this case, a single HSC must be formed, and a single representative must be designated for all establishments.

⁵ In particular, establishments with fewer than 20 employees are excluded from the multi-establishment approach.

To proceed in this way, the employer must, among other things, confirm that the establishments that it wishes to group together carry out activities of the same nature, and ensure that the activities of the HSC and the health and safety representative can be carried out adequately, by considering, in particular, the distance between the establishments. In this respect, if the distance between establishments is so great as to hinder the activities of the HSC and the health and safety representative, the employer may not be able to apply the multi-establishment approach.⁶

CONCLUSION

The amendments made by the Act represent a significant change in the area of workplace prevention. Employers affected by these legislative changes will be required to implement the minimum requirements of the Act by **April 6, 2022**.

For assistance in implementing these measures, do not hesitate to contact a lawyer in our Employment and Labour Relations Group who will be pleased to support you in your efforts.

** The use of the masculine gender has been adopted to facilitate reading and has no discriminatory intent.*

The authors wish to thank Me Nicholas Backman for his precious collaboration in the writing of this article.

⁶ Note that establishments owned by different employers are excluded from the multi-establishment approach. For example, employers who share occupancy or tenancy of the same building cannot be grouped together to take advantage of this option.