

Reimagining **Occupational Health & Safety** in **Quebec**

Bill 59



Bill 59 – The Background

Quebec’s workplace safety regulations were pending overhaul for almost four decades, until Quebec Labor Minister John Boulet introduced ‘Bill 59’ on October 27, 2020, officially referred to as the “Act to Modernize the Occupational Health and Safety Regime”.ⁱ

This new bill is largely being seen as a modern rendition of the ‘Act Respecting Occupational Health and Safety (AOHS)’ⁱⁱ and the ‘Act Respecting Industrial Accidents and Occupational Disease (AIAOD)’ⁱⁱⁱ – a work-oriented injury and illness reparation plan. Both laws were enacted way back in 1979 and 1985 respectively and they were not extensively reviewed since their approval.

The mitigation of workplace risks is the core objective of this new bill. To explain the entire framework through which the regulatory reform would be executed, Jean Boulet stated –

“ “ The evolution of the labor market, the changes as to the nature of the risks associated with work and the need for a flexible and scalable system, modernization of the occupational health and safety system is essential.” ”

The minister stated that he expects by investing more in proactive prevention, the cost of paying out worker indemnities will significantly reduce. The workplace safety board of Canada, the Commission des normes, de l’équité, de la santé et de la sécurité du travail (CNESST) paid around USD 3.2 billion Canadian dollars in 2018 for 225 deaths and 103,406 claims of workplace injuries. On average, every working day around 251 workers suffer from a workplace accident.



Key Modifications and Proposed Additions

The new law proposes a review of the ailments that are considered to be workplace-related and makes provision for the inclusion of post-traumatic stress along with nine new types of cancers resulting from poor working conditions. Bill 59 will also consider psychological risks in any injury prevention program. This is expected to result in significant psychological well-being of employees, going forward.





The following are the other key amendments and additions proposed by the bill:

Amendments in Act Respecting Industrial Accidents and Occupational Disease (AIAOD)

Bill 59 is aimed at amending certain key regulations specified in the Act respecting industrial accidents and occupational diseases (Act) such as:



Establishment of Occupational Diseases Committee

The new bill provisions for the formation of a scientific committee that will deal with occupational diseases and make necessary recommendations regarding occupational diseases to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), through:

- The identification and analysis of research and studies on occupational disease
- The analysis of causal relationship between contaminants and diseases or the risks associated with a particular type of work
- The production of written opinions on identification of risk factors and/or contaminants associated with occupational disease and the criteria defining them

The committee would comprise of five members, whose office term wouldn't exceed five years and their term can be renewed.



The new bill makes provisions for the enactment of law related to occupational diseases which are aimed at ensuring that workers get access to the compensation regime associated with occupational diseases. This new regulation would substitute and modify Schedule I of the Act.

Schedules A and B of the same regulation highlight the diseases and the associated medical conditions for the purposes of the occupational disease presumption as provisioned for in section 29 of the Act. This regulation also clearly states the applicable time limit within which a claim needs to be submitted for such diseases. According to the amendment: “if a worker’s claim is submitted more than three years after the worker receives the diagnosis of an occupational disease, the date on which the injury appeared and, if before the claim is filed, the date on which the worker became unable to carry on his employment, as the case may be, is deemed to be the date on which the claim is filed.”^{vi}



Modifications in Occupational Diseases Regulation

The regulation also specifies a new list of types of cancer that should be considered as occupational disease. These types of cancer classified as “occupational oncological diseases” would be covered by this regulation. Under the proposed modifications, oncology diseases committees would have to be formed by organizations in order to determine whether a worker’s cancer can be categorized as an occupational disease. The regulation also establishes occupational disease presumption associated with post-traumatic stress disorder for workers who are exposed to poor working conditions in an extreme manner or repeatedly. Under the new bill, employers will have the obligation to include psychological risks within their risk management programs.



**Allocation of
Cost Stemming from
Workplace Injuries**

Another key amendment which employers need to stay updated about is cost allocation resulting from employment injuries. Several key updates have been made in the process with an objective to promote proactive prevention of occupational injury.

The edict of ‘unduly burdening of an employer cited in s 326 of AIAOD has been deleted in Bill 59. This creates a chance for the workplace safety board of Canada, Commission des normes, de l’équité, de la santé et de la sécurité du travail (CNESST) to credit employers the costs of benefits resulting from workplace mishaps or incidents for which a third party is responsible.

In the case of a worker having a pre-existing condition such as disability, currently not acclaimed in the law, Bill 59 re-establishes that he or she will be considered a handicap if before suffering from an occupational injury, the person had a condition causing disability.



**Employee
Rehabilitation Measures
Post an Injury**

The Ministry of Labor seeks to introduce several new modifications pertaining to the rehabilitation of an employee post an occupational injury. Firstly, it has been specified that CNESST will be required to undertake proper worker rehabilitation measures as soon it approves a claim for injury and before the injury is consolidated. This way the modification intends to promote vocational reintegration for injured workers and proper rehabilitation both before and after the injury.

According to newer additions to AIAOD through Bill 59, employers will have the right to reinstate an injured worker post rehabilitation once he or she is ready to carry on with employment, even after the period designated for exercising rights of return to work is over. To confute this presumption however, companies will need to prove the prevalence of undue hardship associated with return to work.



**The Establishment
of Medical Assessment
Office**

Bill 59 proposes some minor changes in the process of decision-making of the Bureau d’évaluation médicale when it comes to medical matters, such as diagnosis and the stipulated period of injury consolidation which remains a critical aspect of the overall medical assessment procedure.

While determining the consolidation date of an occupational injury, the Medical Assessment Office will from now on consider a worker’s physical as well mental and functional limitations, if they are not determined.

Amendments in Act Respecting Occupational Health and Safety (AOHS)

Bill 59 comes with certain critical amendments in the Act Respecting Occupational Health and Safety (AOHS) along with the addition of a new regulation surrounding prevention mechanisms. The regulation would clearly demarcate risk levels related to activities carried out in a company for the implementation of a prevention program and induction of a health and safety executive. The risk levels would be primarily classified into three groups (low, medium and high) for activities specified in the North American Industry Classification System (NAICS Canada) published by Statistics Canada.

In order to determine whether a worksite should be subject to prevention mechanisms, several factors would be taken into consideration such as risk levels involved and number of workers employed in an organization. Bill 59 also mentions that number of workers in a company needs to also include workers whose services are hired for.

According to Bill 59, it's a mandate for every organization employing at least 20 workers to create and implement a risk prevention program within one year. However, the bill also provides an opportunity for companies to create a single prevention program and implement it across multiple establishments. In an establishment where the risk levels associated with the work fall within the category of high or medium, the company needs to create and implement a risk mitigation program unique to that establishment, irrespective of the number of workers involved.

All companies will be required to implement the prevention program within a year from the time it becomes an obligation under the bill. These programs will need to be updated on a yearly basis. The measures to mitigate and/or control risks that may affect the safety and health of employees within an organization, should abide by the following hierarchy of prevention mechanisms:



Prevention Mechanisms

- ① Eliminate the risk
- ② Replace processes, materials or equipment to mitigate or reduce the probability of incident
- ③ Implement proactive control measures to reduce the risk associated with equipment or work environment. For instance, installing proper ventilation system and adding adequate safeguards to a machine
- ④ Install warning lights or sound alarms to enhance a worker's risk awareness
- ⑤ Implement stringent administrative risk control measures, such as training workers on the benefits of adhering to safe working methods
- ⑥ Provide workers with protective equipment and offer guidance on proper usage techniques and maintenance

Bill 59 states that in worksites where it's difficult to eliminate risks, the employer needs use a combination of those listed above to control the risks.

According to Bill 59, any organization that employs a minimum of 20 workers in any given year will have to form an occupational health and safety committee (OHS Committee). The current bill proposes minimal standards for the OHS committee which would be applicable if there's no agreement between the employer and certified association(s) representing the workers or the majority of the workers in an organization. The minimal standards as proposed by the bill include:



Establishment of Occupational Health and Safety Committee

- ① The formation and maintenance of the OHS committee
- ② Formation of a process to designate workers' representatives
- ③ Specifying the rules of operation for the OHS committee
- ④ Special training for the committee members

Employees serving as OHS Committee members must make themselves available for attending the training organized by the committee and the employer needs to ensure that they are compensated.



Appointment of Health and Safety Representative

Bill 59 proposes that organizations will have to appoint at least one health and safety representative from among their employees when an OHS committee is formed. By virtue of the office, the representative(s) would qualify as member of the OHS committee.

According to the regulation, where an organization employs five workers and the risk levels are high or where an organization employs ten workers and the risk levels are medium, there needs to be at least one OHS committee representative appointed from the group of employees. The regulation also mandates that the representative will have to attend training programs, the content and duration of which will be determined by the governing bodies of Bill 59. The workers selected as representatives will be adequately compensated by their employers for attending the training sessions.



Maintenance of a Register of Contaminants

According to Bill 59, employees need to create and maintain a database of dangerous substances and contaminants that are present in their worksite. The database may include a list of workers exposed to harmful substances. The process through which this data is to be shared with the commission is yet to be determined by the governing body.



Protection against Physical or Psychosocial Violence

Bill 59 makes it mandatory for employers to take necessary actions to ensure that workers are protected from physical or psychosocial violence, including family or spousal violence.



Enhanced Powers for CNESST

The Bill 59 brings in enhanced powers for CNESST. For instance, the workplace safety board may ask an organization to create and implement a risk prevention program within a stipulated timeframe, if it aims to protect employee health and safety and physical well-being. CNESST can provide this directive, irrespective of the number of employees in an organization or the risk levels associated with the activities carried out by an organization.

CNESST may also ask an organization to designate a health and safety representative whenever deemed necessary.

Amendments to the Process of Contesting a Decision

Bill 59 brings in a series of amendments to the process of challenging decisions. It allows the challenger, under specific conditions to directly refer a dispute to the Administrative Labor Tribunal, without applying for a decision review with the Commission. If an employee believes that a decision taken by the Commission is wrong, he or she may opt to apply for a decision review with the Tribunal within 30 days of the notification or challenge it in front of the Tribunal within 60 days of the notification. There are only certain types of decisions however that can be contested in front of the Tribunal.^{vii}

Recent Developments

In March 2021, Boulet proposed a list of changes in Bill 59 after it drew heavy criticism from a group of lawyers, doctors and unions who denounced it by publishing an open letter. The letter undersigned by the Association des spécialistes en médecine préventive, the Association des juristes progressistes, the Réseau d'aide aux travailleurs migrants agricoles, the Associations de travailleurs accidentés and other Quebec unions stated that reform was expected to have negative consequences for the ones affected by workplace injury. The letter further highlighted that the proposed amendments to Bill 59 will lower the chances for a victim to get his or her injury recognized as work-related officially.^{viii}

In response to the criticism, Boulet introduced amendments for some key regulations, including one that mandated the grouping of organizations on the basis of risk levels with adjustments to prevention mechanism accordingly. This classification was disapproved since it was largely based on reported workplace incidents and not scientific research. Some unions also highlighted that the law came across as sexist because sectors that predominantly employed women such as education and health were exempted out of the prevention mechanisms.

The latest amendments eradicate all references to varying levels of risk and proposes that the prevention system will be applicable to all organizations across industries with 20 employees or more. Other key amendments include the reinforcement of provisions concerning workplace violence and stresses on organizations ensuring complete protection of employees from sexual violence in workplace.

Acting on the Criticality of Compliance: How Can Avetta Support this Reform?

Bill 59 mandates largescale reforms in the way how organizations approach workplace safety and management of occupational diseases and incidents. This means that companies are required, now more than ever to undertake end-to-end evaluation of all the running projects and ensure that they comply with the latest modifications provisioned in the regulation.

While the effects of non-compliance can be far-fetched, compliance comes with its own costs as well. Setting up new safety enforcement committees and medical assessment offices can often turn out to be a daunting task without a proper planning. On the other hand, hiring contractors that already have the requisite levels of compliance in place can greatly reduce the cost burden on companies.

Teaming up with an extensive network provider of clients and suppliers, such as Avetta can help companies find contractors who have a proper compliance mechanism in place in line with the latest modifications proposed for Bill 59. By ensuring that clients are matched with contractors and suppliers that have the expected levels of compliance, Avetta can help companies minimize and even, eliminate the risk of non-compliance. For instance, Avetta, with its state-of-the-art auditing solutions can suggest companies whether they need to form a Workplace Safety Committee or whether there are gaps in the existing safety enforcement model.

References

ⁱ Source: Bill 59, An Act to modernize the occupational health and safety regime;
<http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-59-42-1.html>

ⁱⁱ Source: Act respecting occupational health and safety, CQLR c S-2.1;
<https://www.canlii.org/en/qc/laws/stat/cqlr-c-s-2.1/latest/cqlr-c-s-2.1.html>

ⁱⁱⁱ Source: Act respecting industrial accidents and occupational diseases, CQLR c A-3.001;
<https://www.canlii.org/en/qc/laws/stat/cqlr-c-a-3.001/latest/cqlr-c-a-3.001.html>

^{iv} Source: Evolution of health and safety in the last 50 years;
<https://www.thesafetymag.com/ca/topics/safety-and-ppe/evolution-of-health-and-safety-in-the-last-50-years/183251>

^v Source: Press Release;
<https://www.quebec.ca/nouvelles/actualites/details/projet-de-loi-modernisant-le-regime-de-sante-et-de-securite-du-travail-le-ministre-jean-boulet-depos/>

^{vi} Source: Bill 59, An Act to modernize the occupational health and safety regime;
<http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-59-42-1.html>

^{vii} Source: Bill 59, An Act to modernize the occupational health and safety regime;
<http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-59-42-1.html>

^{viii} Source: Quebec labor minister fixes workplace safety bill after wave of criticism;
<https://montrealgazette.com/news/local-news/doctors-lawyers-and-unions-blast-quebecs-workplace-safety-reform>



About Avetta

Avetta connects leading global organizations with more than 100,000 qualified suppliers, contractors, and vendors across 100+ countries. We support the sustainable growth of supply chains through our trusted contractor prequalification, supplier audits, insurance monitoring, robust analytics and more. With real results in helping companies reduce TRIR, our highly configurable solutions elevate safety and sustainability in workplaces around the world—helping workers get home to their families each night.