

Occupational Health And Safety: Preparing For The Interim Regime



The implementation of changes and developments in occupational health and safety, which began with the coming into force of the *Act to modernize the occupational health and safety regime*¹ (the “Act”) on October 6, 2021, will be carried out in phases over the next few years. It will be finalized no later than October 6, 2025.

During this period, different provisions of the Act will periodically come into force, requiring employers and other players in this field to continuously adapt to the new obligations that are becoming an integral part of Quebec workplaces.

A key date will be April 6, 2022, which will mark the implementation of an interim regime for prevention and worker participation mechanisms. By this date, significant changes will have to be made by a multitude of employers from sectors of activity that were previously exempt from these obligations. This article presents an overview of the most important elements to consider and implement before April 6, 2022.

Prevention mechanisms

Prevention program

While the obligation to create and implement a workplace injury prevention program was previously imposed only on employers belonging to priority groups I, II and III,² it will soon be extended to all employers with at least 20 employees during the same year, including temporary or leased labour. Until the regulations governing the implementation of a prevention program come into force, the government has provided for various measures to ensure that this obligation will be promptly fulfilled, while still allowing for a transition period.

Employers that are already required to have a prevention program in place will have to maintain it until the new system’s final implementation. By April 6, 2022, all other employers with 20 or more employees-regardless of the group to which they belong-will be required to identify and record in writing the risks present in their workplace that could affect the health and safety of their employees. They will then have to analyze these risks, i.e., evaluate their

significance and seriousness and consider the probability of their occurrence, with the ultimate goal of setting priorities for action and ensuring adequate follow-up.

These risks can take different forms and will vary depending on the sector of activity and type of business. Nonetheless, they can be grouped into six broad categories of risk: 1) chemical, 2) biological, 3) physical, 4) ergonomic, 5) psychosocial and 6) safety-related. Of particular note are psychosocial risks, which are also new to the Act and will likely need to be considered by all employers.

Action plan

For employers with **fewer than 20 employees** on their premises, this measure takes the form of an “action plan.” The scope of the obligation is less extensive, but risks must still be identified and recorded. At present, a risk analysis is not required, although there is nothing to prevent an employer from carrying one out.

Participation mechanisms

With regard to participation mechanisms, i.e., measures to promote the involvement and collaboration of employees in the development and management of prevention mechanisms, only employers in priority groups I and II were previously required to take these into account. However, once the related legislative provisions come into force, all Quebec employers will have to deal with this reality, depending on the number of employees in their workplace.

Health and safety committee

All employers with 20 or more employees on their premises will be required to form a health and safety committee and create a prevention program. The interim regime applicable as of April 6, 2022, provides for a simplified version of this requirement, which will apply until the permanent regime comes into force.

The purpose of this committee, at least during the interim period, will be to participate in the identification and analysis of risks and to make recommendations to the employer. The committee’s role will therefore be linked to the development of the prevention program, as previously mentioned.

This committee is intended to be a joint committee with an equal number of employer and employee representatives. The number of employees may be determined by agreement between the parties or, failing that, according to the number predetermined by the Act, i.e., from two (2) to six (6) representatives, depending on the total number of employees present in the facility.

Committee meetings may be held at a frequency agreed upon by the employer and the employees. In the event of disagreement, meetings must be held at least every three (3) months.

In addition, various provisions of the *Act respecting occupational health and safety*³ will continue to apply under the interim regime, including the manner in which employee members of the committee are to be appointed by other employees or their union.

Employers already subject to the requirement to form a health and safety committee must maintain it in accordance with the provisions that applied previously until the final amendments come into force. For other employers who do not have a minimum of 20 employees in their facility, this measure is not mandatory.

Health and safety representative

Other changes in the Act relate to the health and safety representative. This role, previously referred to as the “safety representative,” was mandatory for employers in priority groups I and II. Under the Act, all employers with 20 or more employees will now have to comply, regardless of their priority group.

Under the interim regime, this person, who must be an employee, must be appointed by the other employees by April 6, 2022, in accordance with the provisions in force. The health and safety representative will be responsible for inspecting workplaces and making recommendations to the health and safety committee. They will be able to file complaints with the CNESST or assist their colleagues in doing so.

In order to carry out their duties, the representative may be absent from work for a period of time determined by agreement of the members of the health and safety committee. If the members cannot agree on this, the representative may be absent each quarter in accordance with the minimum time period provided for in the Act, i.e., from 9 hours and 45 minutes to 68 hours and 15 minutes, or more, depending on the number of employees present in the facility.

Liaison officer

Employers with fewer than 20 employees, which are not required to set up a health and safety committee or appoint a health and safety representative, are still required to appoint a liaison officer.

The liaison officer must cooperate with the employer to facilitate the communication of health and safety information between the employer and the employees. They must also make written recommendations to the employer regarding the identification of risks in the workplace.

Similar to the health and safety representative, the liaison officer is appointed by the other employees in a manner determined by them or their union.

Multiple facilities

Finally, employers with several facilities will have the option to pursue a global approach to workplace safety that would apply to some or all of their facilities, as long as the operations are of the same or similar nature.

Thus, if the operations are similar at all the sites, it will be possible to create a single prevention program, form a single health and safety committee, and appoint a single health and safety representative. In such a case, the prevention program must account for the identification and analysis of all the risks present at all the facilities to which the program applies.

As previously mentioned, this global approach is permitted only if the operations are of the same or similar nature in all facilities. In addition, the

Act requires that the activities of the health and safety committee and the health and safety representative be carried out adequately, particularly considering the distance between facilities. Thus, an employer may be operating several facilities in which the operations are the same or similar, but if the facilities are too numerous or too geographically distant from one another for the responsibilities of the committee or the representative to be properly carried out, the employer would not be permitted to take the global approach.

Conclusion

The amendments made by the Act are an important step forward in terms of preventing workplace injuries. However, implementation may prove challenging for employers, who have until April 6 to comply with the Act's minimum requirements.

At Langlois Lawyers, our team specializing in occupational health and safety matters can help you implement these measures.

Footnotes

¹ 2021, chapter 27.

² The *Commission des normes, de l'équit , de la sant  et de la s curit  du travail* (CNESST) categorizes Quebec companies into 33 sectors of economic activity, which are then divided into six priority groups. These priority groups comprise companies in economic sectors that present similar occupational health and safety risks.

³Chapter S-2.1.

Source: Langlois Lawyers LLP

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