



Au bas de
l'échelle

A GRASSROOTS ORGANIZATION DEFENDING THE RIGHTS OF NON-UNIONIZED
WORKERS

The Act Respecting Labour Standards
in a Nutshell

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Au bas de l'échelle is a group dedicated to popular education. We publish a variety of informational and analytical literature on workers' rights in language accessible to the ordinary person. We also offer information services and training about the *Act respecting Labour Standards*, including a telephone hot line, training workshops, group information meetings on mediation, etc.

Au bas de l'échelle also takes political action to defend and expand the rights of non-unionized workers, particularly with regard to the *Act respecting Labour Standards*.

WARNING

This brochure is meant to explain *The Act respecting Labour Standards* in language accessible to the general public. It does not include all of the exceptions or exclusions under the law. Before taking action of any sort, it is advisable to contact *Au bas de l'échelle*, the *Commission des normes du travail* or a lawyer specializing in labour law. Also, laws and regulations may be amended at any time by the Government of Quebec. The information in this brochure is up to date, to the best of our knowledge, as of January 2011.

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LONG LIVE LABOUR UNIONS!

Our purpose at *Au bas de l'échelle* is to defend the rights of non-unionized workers. This doesn't mean, however, that we're against unionization. Quite the opposite!

We believe that one of the best ways to improve working conditions is to get together and form a union. There are many benefits to being unionized. Unionization generally means ...

- greater bargaining power
- more respect and fairness in the distribution of working hours, vacations, promotions, etc.
- higher wages: the median hourly wage of a unionized employee is \$ 22,00 compared to \$ 16,00 for a non-unionized employee—\$ 6,00 more an hour (Source : FTQ march 2010)
- more stable employment : 50% of unionized employees have 10 years of continuous services compared to only 20% of non-unionized employees
- two to three times more likely to be entitled to benefits (e.g., group insurance, pension plan)

When unionization is not possible (often the case in very small companies), you can count only on the ***Act respecting Labour Standards*** to ensure minimal working conditions.

1- THE ACT RESPECTING LABOUR STANDARDS (ALS)

WHO IS COVERED BY THE ACT RESPECTING LABOUR STANDARDS?

Your employer's "management rights" are limited by **public policy statutes**, that is, laws that everyone must obey. These laws apply even if you have agreed verbally or in writing to working conditions that are not as good as those provided for under these laws.

The Act respecting Labour Standards (ALS) is a public policy statute that establishes minimum labour standards. The agency responsible for ensuring application of the ALS is the *Commission des normes du travail* (CNT).

Anyone, unionized or not, who works for an employer in exchange for wages here in Quebec is covered by the ALS. There are some exceptions, however, such as self-employed workers.

Self-employed?

Watch out! Just because your employer says you're self-employed doesn't mean you really are. So-called "contractual" employees are often in reality salaried employees according to the ALS. It all depends on whether you have a relationship of subordination with your employer.

For example, if you work for only one "client" and that "client" controls how you do your work, you may be a salaried employee and not an independent contractor, and your "client" may in fact be your employer.

In this case, you can file a complaint with the CNT to have your true status as an employee recognized and obtain all the benefits to which you are accordingly entitled. You can file a complaint even if you have agreed to work as an independent contractor. It's the law, and everyone must obey it!

WAGES AND PAYMENT

MINIMUM WAGE

You must be paid at least the minimum wage for any work you do.

Minimum wage from May 1 to April 30, 2011 is as follows :

- **General rate : \$ 9,50** (\$ 9,65 as from May 1, 2011)
- **Rate for employees receiving tips : \$ 8,25** (\$ 8,35 as from May 1, 2011)

The general rate of the minimum wage is currently too low; not even enough to live above poverty level.

Note that people who look after children are entitled to the minimum wage (general rate), except if they do so only on an occasional basis (an evening from time to time).

EMPLOYEES RECEIVING TIPS

To be considered an employee receiving tips under the law, you must meet two conditions. **Firstly**, you must **usually** get tips. In other words, you need to check if it is usual to receive tips, in your job, even if you receive very little or on an irregular basis. Secondly, you must work in one of the following workplace:

- A restaurant, except those where customers order and choose their food at a service counter and pay before they eat (fast food);
- An enterprise that sells, delivers, or serves meals to be eaten off the premises;
- A hotel or inn, including a camping park;
- A place where alcoholic beverages are served or sold to be consumed on the premises such as café and bar.

JOB	Entitled at least to the general rate of the minimum wage	Entitled at least to the wage for employees receiving tips
Waiter/waitress		X
Pump attendant	X	
Pizza delivery person		X
Person who delivers flowers	X	
Barman/Barmaid		X
Restaurant cashier	X	
Fast food counter attendant	X	

The tip belongs to the employee who provided the service. In addition, an employer cannot require that an employee pay **credit card costs** and deduct them from the tips.

PAYMENT

Pay sheet (or pay slip)

In addition to your salary your employer must provide you with a pay sheet so as to enable you to understand and check all calculations that determine your salary. The sums deducted from your gross salary and the reason for these deductions should be written.

You can create a sample pay sheet on the website of the *Commission des normes du travail* (CNT) at www.cnt.gouv.qc.ca/en.

Pay period

The employer must pay your wages at regular intervals of **no more than 16 days**—except for your first payment, which may be paid within one month. There are exceptions (e.g., managers, certain dependent “contractual” workers).

Any amounts that are not part of your regular wages, such as a bonus or overtime, may be paid with your next regular payment.

Logbook

It’s a good idea to keep a daily record of the hours you work and the commissions and tips you earn. You can enter this information in a logbook that you keep in a safe place. If you work overtime, enter the reason why and the names of people who can testify that you did indeed work overtime. A record of this sort can also be helpful for people who work irregular hours. You can then check that your pay sheet is accurate and complete, and your logbook can serve as evidence if you must claim any amounts owing. The CNT provides a logbook free of charge called “Noter les heures de travail, c’est important !” (in French only). You may also record your hours of work on a day-to-day basis using the free interactive agenda “i job” available on the CNT website.

ILLEGAL DEDUCTIONS AND DEMANDS FOR REIMBURSEMENT

Any deductions that are not provided for under the law or that you have not approved in writing are illegal. In addition, the reason of any such deduction must be written. However, you may withdraw your consent at any time by doing so in writing—except for contributions to a private pension plan or to group insurance.

The most common illegal deductions or demands for reimbursements are for the following :

- Uniforms, special clothing, material or equipment which are compulsory
- Operations-related costs

Paiement for uniforms, special clothing, material, equipment or raw materials which are compulsory

- **If you are paid the minimum wage (general rate)** : the employer must supply these free of charge and cannot require that you pay for their use or upkeep.
- **If you are paid more than the minimum wage** : the employer cannot require that you pay any amount for their purchase, use or upkeep that would cause you to receive less than the minimum wage (general rate).
- **If you are an employee receiving tips** : Same thing. You must receive at least the general rate of the minimum wage. Your wages are however calculated taking into account the declared tips.
- Special clothing **that identifies you as an employee of a particular establishment** must be provided free of charge (e.g., clothing with the logo or name of the establishment).
- Your employer cannot require that you purchase **clothing or accessories that your employer sells**.

Reimbursement/deductions for operations-related expenses

For example, broken dishes, damage to equipment, inventory shortages, cash shortages (if the employee does not have total control of the cash), NSF cheques.

The employer may NOT require that such costs be reimbursed and may definitely NOT deduct them directly from your pay. In fact, you can file a complaint to have the amount deducted returned, even if you consented to the deduction in writing.

DURATION OF WORK

REGULAR WORKWEEK

The regular workweek determines the time from which your employer must start paying you at least time and a half (your hourly wage X 1.5).

In Quebec, the regular workweek is **40 hours**. This means that if you generally work 35 hours a week, your employer does not have to pay you time and a half starting the 36th hour you work. The employer must, however, pay you at least your regular rate until you reach 40 hours of work. After that, the employer must pay you time and a half.

The regular 40-hour workweek does not apply to management staff. Consequently, the employer does not have to pay management staff time and a half for hours worked beyond 40 hours a week.

The law does not specify a regular work day.

You can take time off from work (compensatory time) instead of receiving a cash payment for your overtime hours, provided you and your employer agree to this. However, your employer cannot oblige you to accept time off instead of cash. If you agree to compensatory time instead of cash, your overtime hours are still counted at time and a half, which means you must be given 1.5 paid hours off for each hour of overtime you worked.

Your employer may not transfer your overtime hours to the following weeks to avoid having to pay you overtime, barring special authorization from the *Commission des normes du travail*.

For example, you work 50 hours one week and 30 the following week. Your employer cannot add up the hours you worked over the two weeks and then divide the sum by two (50 + 30 = 80 divided by 2 = 40) to avoid paying you overtime. Your employer must pay the 10 hours that you worked overtime during the first week at time and a half.

REFUSAL TO WORK OVERTIME

You can refuse to work overtime for any of the following **three reasons** :

1. You may refuse to work beyond your regular hours because of **parental or family obligations** to your child, your spouse's child, your spouse, your mother, your father, your sister, your brother or your grand parents. You must, however, have taken reasonable measures within your power to deal with these obligations so you can remain at work.
2. You may refuse to work after you have worked six days in a row as you have a right to at least 32 hours of rest.
3. You may refuse to work if you have reason to believe it will be dangerous to your health or safety or to that of your colleagues—if you have already worked too many hours, for example (*The Act respecting Occupational Health and Safety*).

You may also refuse to work after you have worked a certain number of hours on a particular day. There are three possible situations :

1. If you have **stable working hours**, you can refuse to work **more than 4 hours** beyond your regular daily working hours.
2. If you already work **long hours**, you can refuse to work **more than 14 hours** in any period of 24 hours.
3. If you work **irregular hours or on a split shift**, you can refuse to work **more than 12 hours** in any period of 24 hours.

You may also refuse to work after you have worked a certain number of hours in a given week. No matter what type of shift you work, **you can refuse to work more than 50 hours in any one week.**

PRESENCE AT WORK

Lateness

The employer cannot require that you work without being paid. For example, if you arrive 15 minutes late for work, your boss may not withhold 30 minutes of wages from your paycheque, so that you work 15 minutes without being paid. However, there is nothing in the law that gives you the right to arrive late for work!

Coffee breaks

Coffee breaks are not mandatory, but if your employer grants them, they must be paid.

Meal breaks

After five consecutive hours of work, you are entitled to a 30-minute unpaid break for a meal.

However, if the employer requires that you remain available on the work premises (the employer has the right to do this!), then this half-hour must be paid.

Meetings, travel or training periods, and travelling time

You must be paid at least the minimum wage if these are required by the employer. This does not, however, include the time required to get to your usual place of work.

If the employer requires that you travel or take part in training, then the employer must reimburse reasonable expenses you incur in doing so.

Waiting time

If your employer requires that you remain available on the work premises and wait to be assigned work, then you must be paid for the time you wait.

Reporting time pay

If your employer asks you to report to work to do a job that generally takes at least three hours but you actually work less than three consecutive hours, your employer still has to pay you for three hours of work at your regular hourly rate of pay. This doesn't apply, however, if you have to stop working because of an unforeseen, outside event (a fire, for example, or an electricity outage in the neighbourhood).

HOLIDAYS, VACATIONS AND LEAVES

PUBLIC HOLIDAYS

Under the *Act respecting Labour Standards*, you are entitled to eight paid public (statutory) holidays :

- The 1st of January (New Year's Day)
- Good Friday or Easter Monday (the employer decides which one)
- The Monday preceding May 25 (National Patriots' Day)
- June 24 (or June 25 if June 24 is a Sunday, **for workers who don't usually work on Sunday**) (the Quebec national holiday or St-Jean-Baptiste day)
- The 1st of July, or the 2nd if the 1st is a Sunday (Canada Day)
- The first Monday in September (Labour Day)
- The second Monday in October (Thanksgiving)
- December 25 (Christmas)

Condition

To be entitled to these paid holidays, including the Quebec national holiday, you must not be absent from work **without your employer's authorization or without valid reason** on your regular work days just before and after the holiday.

For example, supposing you normally work Thursdays, Fridays and Saturdays (underlined)

LABOUR DAY- September 5, 2011 (shaded)

S	M	Tu	W	Th	F	S
				<u>1</u>	<u>2</u>	3
4	5	6	7	8	<u>9</u>	<u>10</u>

You must not be absent from work without valid reason on Saturday, September 3, and Thursday, September 8 (in bold) to be entitled to a paid holiday on Labour Day.

If you meet this one condition, you are entitled to **holiday pay** equal to 1/20 of the regular wages you earned in the **four** complete workweeks before the workweek with the holiday—excluding overtime but including declared tips.

For example, you earn \$ 12 an hour and you worked 28 hours a week in the four weeks prior to the Labour Day week. You are entitled to the following holiday pay :

28 hours X \$ 12 = \$ 336

\$ 336 X 4 weeks = \$ 1,344 divided by 20 = **\$ 67,20**

Your holiday pay is calculated differently if you earn **a commission**.

A complete workweek is the week covered by a pay period; a pay period can run from Saturday to Friday, for example, or from Friday to Thursday, etc.

If you work on a public holiday

If you work on a public holiday, your employer has two options :

- a) You can be paid your holiday pay in addition to wages at your regular rate **or**
- b) You can be given a **substitute holiday off with holiday pay** in the three weeks before or after the public holiday. If the holiday falls on a day that isn't ordinarily a working day for you, you are entitled to holiday pay but not to a substitute day off.

In the case of **the Quebec national holiday**, the substitute holiday must be taken on the working day before or after the holiday.

SICK LEAVE WITHOUT PAY

You are entitled to be absent from work due to accident or illness for **up to 26 weeks** in a 12-month period. When you return to work, you must be reinstated in your usual job with the same benefits to which you would have been entitled had you not taken sick leave (for example, a wage increase that everyone received).

You are only entitled to this right if you have **three months of continuous service** and you inform your employer as soon as possible.

Continuous service is the period during which you are employed by a particular employer. It is calculated in calendar days, not work days, from your hiring date. *For example, if you started work on June 1, 2009, and you are still working for the same employer on June 1, 2011, then you have two years of continuous service, even if you were laid off for three months during this period (see definition of "temporary layoff" below under "Termination of employment").*

The law does not provide for sick leave paid by the employer, but check if you are entitled to sickness benefits through employment insurance or disability insurance benefits. Sickness benefits through employment insurance may be paid for up to 15 weeks. If the illness or the accident is related to work, you should file a claim with the *Commission de la santé et de la sécurité au travail* (CSST).

VACATIONS (ANNUAL LEAVE)

Under the *Act respecting Labour Standards*, you are entitled to a vacation with pay. The length of your vacation (vacation time) depends on your continuous service by **the end of the reference year**.

The reference year is a period of twelve consecutive months determined by the employer or, by default, running from May 1 to April 30 of the following year.

Less than one year of continuous service : You are entitled to one working day of vacation per month of continuous service accumulated during the **reference year**, to a maximum of two weeks vacation. Your vacation pay is 4% of the gross wages you earned during the reference year.

One to five years of continuous service : You are entitled to two weeks vacation with pay. Your vacation pay is 4% of the gross wages you earned during the reference year. You may also take a third week of vacation without pay.

Five years of service or more : You are entitled to three weeks of vacation with pay. Your vacation pay is 6% of the gross wages you earned during the reference year.

FOR EXAMPLE ...

You started working on January 31, 2011. The reference year set by your employer is April 1 to March 31 of the following year. You are therefore entitled to at least two days of vacation with pay between April 1, 2011 and March 31, 2012. If you are still working for the same employer on March 31, 2012, you will be entitled to at least two weeks of vacation with pay between April 1, 2012 and March 31, 2013.

Who decides when you can take your vacation ?

Your employer decides when you take your vacation. Your employer must notify you at least four weeks in advance. Also, your employer has to give you your vacation pay in a lump sum before your vacation starts.

FAMILY OR PARENTAL LEAVES

Notes for the following table :

- 1- You must be eligible for parental insurance (see following chapter) or employment insurance.
- 2- If a child is born through assisted reproduction during the civil union of two women, the spouse of the biological mother is presumed to be the other parent.
- 3- Check with your employer whether you are entitled to salary insurance, supplemental unemployment benefits or top-up benefits.
- 4- Other provisions apply (extension, change of starting or return date) if the health of the baby or the mother so require or if the pregnancy is terminated before the 20th week.
- 5- The laws that apply to this table recognize same-sex spouses.

PRINCIPAL LEAVES FOR FAMILY REASONS

	Maternity leave	Paternity leave	Parental leave
Event	Pregnancy or termination of pregnancy after the 20th week	Birth of a child	Newborn or adoption
Eligibility	Pregnant woman	The father or the spouse of the biological mother ²	The mother or the father or the adoptive parents
Duration of leave	18 continuous weeks, or more if the employer agrees	5 weeks	52 continuous weeks for each parent
Pay	Unpaid leave ³	Unpaid leave ³	Unpaid leave ³
Parental insurance benefits¹	Maternity benefits	Paternity benefits	Parental benefits for the mother or the father ² or divided between the two
Leave period	<ul style="list-style-type: none"> - Earliest start date : 16 weeks before the due date - Latest end date : 18 weeks after the week of delivery⁴ 	<ul style="list-style-type: none"> - Earliest start date : the week in which the child is born - Latest end date : 52 weeks after the child's birth 	<ul style="list-style-type: none"> - Earliest start date : the week the child is born or the week of adoption or of departure abroad - Latest end date : 70 weeks after the birth or adoption⁴
Qualifying conditions (notice to employer, etc.)	Written notice at least 3 weeks before the leave, with the date the leave will start and the date of return to work and a medical certificate attesting the pregnancy and the due date ⁴	Notice to the employer as early as possible, ideally at least 3 weeks in advance	Notice at least 3 weeks before start of the leave, with mention of the date the leave will start and the date of return to work ⁴
Special conditions	<ul style="list-style-type: none"> - Possibility of returning to work before the expected return date on 3 weeks written notice of the new date of return⁴ - Possibility of suspending the leave if the child hospitalized and employer agrees⁴ 	Possibility of suspending the leave if the child is hospitalized and the employer agrees ⁴	<ul style="list-style-type: none"> - Possibility of returning to work before the expected date if written notice 3 weeks in advance of the new date - Possibility of resuming work on a part-time or occasional basis during the leave if the employer agrees⁴

	Leave for termination of pregnancy before the 20th week	Leave for parental or family obligations	Leave for illness of a child or relative
Event	Natural or induced termination of pregnancy	Leave for custody, health or education-related parental obligations or leave for reasons related to the health of a family member	Leave because your presence is required with a child or relative due to serious illness or serious accident
Eligibility	Termination of pregnancy	- Obligations with respect to your child or your spouse's child ⁵ - Family member = spouse ⁵ , father, mother, brother, sister, grandparent	Illness of your child, your spouse's child ⁵ or a close family member, including the spouse of your mother or father ⁵ .
Duration of leave	Maximum 3 weeks	10 days, not necessarily consecutive	12 weeks (consecutive or not consecutive)
Pay	Unpaid ³	Unpaid	Unpaid ³
Employment insurance benefits¹	Sickness benefits : up to 15 weeks	Doesn't apply	Possibility of compassionate care benefits : up to 6 weeks (Find out about eligibility conditions)
Leave period	No restrictions	12-month period starting from the first absence	12-month period starting from the first absence
Qualifying conditions (notice to employer, etc.)	You must give written notice as soon as possible with an expected date of return to work and a medical certificate attesting to the termination	- Your employer must be informed as soon as possible - You must take reasonable measures to avoid such leave and minimize its duration	- 3 months of continuous service - You must inform your employer as soon as possible and be able to provide documents in proof on request (e.g., medical certificate)
Special conditions	The leave can be extended with a medical certificate stating an extension is necessary	- Half-days can be taken if the employer agrees	This leave can be extended if your minor child suffers from a life-threatening illness, was victim of a crime or has disappeared. Days off are also available in case of a close relative's death.

Leave for birth or adoption

The law also provides for absence from work for a maximum of five working days on the birth or adoption of a child. Two of these days are paid if you have at least 60 days of continuous service. The five days do not have to be consecutive. The mother as well as the father or the spouse of the biological mother are entitled to this leave, as is an employee whose pregnancy is terminated in the 20th week of pregnancy or later. This leave must be taken no more than 15 days after the child's arrival at home or after the termination of pregnancy.

Job protection during leaves

The *Act respecting Labour Standards* (ALS) gives you the right to be absent from work for a certain period of time for the family and parental events and responsibilities described above. Unfortunately, the employer is not obliged to pay you during this period, apart from the two days for birth or adoption mentioned above.

The ALS only protects your right to return to the same job with all the benefits to which you would have been entitled to, as with sick leave. Parental insurance benefits can, however, partially compensate for wages lost during certain leaves.

PARENTAL INSURANCE BENEFITS

Quebec parental insurance plan (QPIP) offers maternity, paternity and parental benefits to workers.

Eligibility

To qualify for parental insurance benefits, you must meet the following conditions :

- Have contributed to the Quebec parental insurance plan
- Have earned at least \$2000 of insurable income, generally over the last 52 weeks
- Reside in Quebec at the start of the benefit period
- Are no longer earning a remuneration or are earning at least 40% less than usual

Two options

You can choose between two options:

- **Basic plan:** you receive a lower percentage of your salary over a longer period of time.
- **Special plan:** you receive a higher percentage of your salary for a shorter period of time.

Often the choice is made when a pregnant women requests maternity benefits. Once you begin receiving benefits, you can't change your mind.

THE TWO PLAN OPTIONS

Type of benefit	BASIC PLAN		SPECIAL PLAN	
	Number of benefit weeks	% of gross weekly income	Number of benefit weeks	% of gross weekly income
MATERNITY	18 weeks	70%	15 weeks	75%
PATERNITY	5 weeks	70%	3 weeks	75%
PARENTAL*	7 weeks 25 weeks	70% 55%	25 weeks	75%
ADOPTION*	12 weeks 25 weeks	70% 55%	28 weeks	75%

*The total number of weeks of parental or adoption benefits may be taken by either parent or shared by both, as was the case with the federal employment insurance plan.

The other parent (generally the mother's spouse) must **normally live with the child** for entitlement to paternity and parental benefits.

You must apply in the course of the week (from sunday to saturday) during which you want your benefits. You cannot apply earlier than 16 weeks before the expected date of birth. The employer has **five working days** to give you a **record of employment** from the date you take leave. You can apply for benefits even if you have not yet received your record of employment.

PSYCHOLOGICAL HARASSMENT

The ALS defines psychological harassment as follows :

- **vexatious or offensive behaviour** in the form of **repeated** and **hostile** or **unwanted** conduct, verbal comments, actions or gestures
- that **affects** an employee's **dignity or psychological or physical integrity**
- and that results in **a harmful work environment** for the employee.

A single serious incidence of such behaviour that has a lasting harmful effect on an employee may also constitute psychological harassment.

The law stipulates that everyone has a right to a work environment free from psychological harassment, which means that your employer must take measures **to prevent and put a stop to** psychological harassment.

If you want to file a complaint of psychological harassment, you must do so **within 90 days of** the last incidence of the offending behaviour. A number of remedies are possible—from **reinstatement** to **severance pay** or payment of **punitive and moral damages**.

Au bas de l'échelle offers free information guides on psychological harassment. The CNT has also published some excellent brochures.

TERMINATION OF EMPLOYMENT

If you are temporarily laid off for more than six months, permanently laid off or dismissed, your employer must pay you the vacation pay to which you are entitled (often referred to as the **4%**) **and** must give you **written** notice of termination of employment some time before your employment ends. The length of the notice is set by law and depends on your continuous service with your employer.

There are four types of termination of employment :

- **Resignation** : You decide voluntarily to quit your job.
- **Temporary layoff** : You temporarily stop working for financial or administrative reasons; you still have an employment relationship and will eventually be recalled back to work.
- **Permanent layoff** : Your employer severs the employment relationship or ends your work contract for financial or administrative reasons (reorganization, elimination of jobs, financial difficulties, etc.).
- **Dismissal** : You are fired for incompetence or a disciplinary infraction (frequent lateness, insubordination, fraud, theft, etc.).

If your employer fails to notify you of the termination of employment within the required time frame, then your employer must pay you the wages you would have received during the notice period to which you are entitled. The employer is not obliged to give you a notice of termination of employment if you have less than three months of continuous service.

Note that the notice of termination of employment is not the same thing as the record of employment, which your employer must give you so that you can apply for employment insurance benefits.

NOTICE OF TERMINATION OF EMPLOYMENT

Continuous service	Notice required
3 months to 1 year	1 week
1 to 5 years	2 weeks
5 to 10 years	4 weeks
10 or more years	8 weeks

You are not entitled to a notice of termination if you have committed a **serious** infraction (such as theft or fraud) or if the termination is due to an unforeseeable, irresistible external event—such as a fire. Bankruptcy is not considered an unforeseeable, irresistible event.

LEGAL RECOURSES

Your rights are protected under the ALS, and you can file a complaint with the *Commission des normes du travail* (CNT) if your employer does not respect them. The role of the CNT is to ensure that the law is enforced. The CNT does not charge for its services.

COMPLAINTS RELATED TO WAGES OR TO AN ADMINISTRATIVE INFRACTION

You can claim any amounts your employer owes you by filing a “pecuniary complaint” with the CNT. You have **one year** after the fact to file your complaint. In other words, a complaint filed on May 1, 2011 can only cover amounts owed since May 1, 2010 and not before that date.

If your employer has failed to respect an obligation that does not involve money, you can file an “administrative complaint”—if your employer fails to give you your pay sheet, for example.

If your employer refuses to pay up, the CNT will take him to court.

Afraid of reprisals?

Your employer may not dismiss you because you have exercised your right to redress under the ALS (see Complaints of prohibited practices).

The CNT is not supposed to disclose your name during an investigation. In other words, **your complaint is anonymous** unless you give permission for your identity to be disclosed.

COMPLAINTS OF PROHIBITED PRACTICES

Your employer may not fire, transfer, suspend, discipline or discriminate you for any of the following reasons :

- Because you exercised a right recognized under the *Act respecting Labour Standards*
- Because you took part in a CNT inquiry or gave information to the CNT
- Because you are pregnant
- Because you refused to work overtime due to parental or family obligations, after taking reasonable measures within your power to avoid having to leave work

You are protected from such practices from the day you are hired. If you are a victim of a prohibited practice, you can file a complaint with the CNT.

Examples of prohibited practices

1. Your boss doesn't include your holiday pay in the paycheque you receive before the holiday or in the one you receive after it. You talk to him about it. He gets mad and decides to cut your working hours.

2. You have at least three months of continuous service. You are sick and can't work for two weeks. You provide a letter from your doctor, but your boss fires you anyway.

3. You take a maternity leave followed by a parental leave. You notify your employer by the required deadline. When your parental leave ends, your employer refuses to take you back, saying he's replaced you.

In all of these cases, the employer has not obeyed the law and you can file a complaint to have the situation redressed.

ATTENTION! There are deadlines that must be met. You have to act fast or you lose your rights. You have **45 days** from any disciplinary measure, dismissal or other reprisal to file your complaint.

COMPLAINTS OF UNJUST DISMISSAL

If you have at least **two years of continuous service**, you are protected against unjust or arbitrary dismissal. This includes protection against "constructive dismissal", that is, roundabout measures your employer takes **with the sole purpose** of getting you to quit (e.g., a major cutback in wages or in working hours). Here as well, you have **45 days** from the dismissal or the cutback in working hours or wages to file a complaint with the CNT.

OTHER WAYS OF GETTING YOUR EMPLOYER TO OBEY THE LAW

Getting your employer to obey the law is not always easy! *Au bas de l'échelle* is well aware of this. This is why we suggest a variety of strategies to make this happen. There is no guarantee, however, that any of them will work. You can try whichever you think might work best in your situation.

1. **Tell your employer** about the labour laws : some employers act in good faith but are not really familiar with the *Act respecting Labour Standards*. Sometimes it's just a question of informing them, with documents in support whenever possible. Give your employer one of the brochures from the *Commission des normes du travail*, for example. There are quite a few, and they are all free.

2. **Consider unionizing** (see main benefits of unionizing at the beginning of this brochure). Act with caution, however. Discuss it only with one or two people you trust completely before meeting a union that will explain what you have to do.

3. **Get together** with fellow workers to approach your employer as a group. For example, you might get everyone to sign a sort of petition or list of demands that

you and a fellow worker present to your employer. Note to all: this strategy is risky.

4. **File a complaint** with the *Commission des normes du travail*, **before** speaking to your employer if you are afraid of reprisals. It will then be easier to prove you have exercised your right. If your employer doesn't want to listen to reason, you can pursue the complaint.

5. At worst, **wait until you quit** to claim amounts owed to you by your employer. Don't forget, however, that you cannot claim amounts owing for more than one year.

2- OTHER LAWS

- The **Quebec Labour Code** outlines procedures for unionizing and negotiating a collective agreement and protects the right to unionize (freedom right of association).
- The **Act respecting Occupational Health and Safety** was adopted to eliminate sources of danger to the health, safety and physical well-being of workers. This law gives you the right to refuse, under certain conditions, to perform dangerous work. The **Act respecting Industrial Accidents and Occupational Diseases** provides for income replacement benefits when prevention did not work. The application of these two laws is the responsibility of the *Commission de la santé et de la sécurité au travail* (CSST).
- The **Charter of Human Rights and Freedoms** prohibits discrimination or harassment based on race, colour, sex, pregnancy, sexual orientation, civil status, age, religion, political convictions, language, ethnic or national origin, social condition or handicap. The *Commission des droits de la personne et des droits de la jeunesse du Québec* (CDPDJ) is responsible for application of the charter.
- **The Pay Equity Act** was adopted to correct wage inequities between jobs performed mainly by women and those performed mainly by men. The purpose of the act is to ensure equal pay for different but equivalent work in any one company (for example, the wages of a secretary/receptionist compared to those of a collection clerk).
- The **Charter of the French Language** requires companies under provincial jurisdiction employing 50 people or more to ensure generalized use of French in all their activities, giving Quebecers the right to work in French.
- If you work for a company under federal jurisdiction (banks, interprovincial or international transportation, airports, etc.), you are protected by Canadian laws such as the **Canadian Labour Code** and the **Canadian Human Rights Act**. About 10% of the Quebec labour force is governed by these laws. *Human*

Resources and Skills Development Canada, Labour Program, is the agency responsible for application of the *Canadian Labour Code*.

There are also **collective agreement decrees** under which better conditions are mandatory for workers in certain industries and regions of Quebec (e.g., the decrees respecting building service employees). Parity committees have the responsibility for applying and enforcing these decrees.

TEST YOUR KNOWLEDGE OF THE LAW

EXERCISE 1

Question : Which of the following employers is violating the law?

EMPLOYER A : You've been working in a convenience store for several weeks. Your employer conducts an inventory and finds a shortage, which he attributes to theft. He decides to split the loss among the store employees, as he holds all of you responsible for policing items in the store.

EMPLOYER B : You work in a restaurant as a counter sales person and you wear **a uniform with the logo of the restaurant on it**. There is a cup at the counter where customers can leave tips if they wish. Tips collected are split between you and your colleagues according to a tip-sharing agreement. You are paid minimum wage, general rate. The employer requires that you give him an amount equal to the tips you receive until you have paid off the total cost of your uniform.

EXERCISE 2

Circle the right answer.

From when does your employer have to pay you overtime?

- A) After 35 hours
- B) After 40 hours
- C) After 44 hours
- D) As soon as I work more than my usual shift

EXERCISE 3

You work 36 hours over four days, distributed as follows :

Wednesday	Thursday	Friday	Saturday
10 hours	10 hours	10 hours	6 hours

Question : **Are you entitled to time and a half for any of these hours?**

EXERCISE 4

You work 48 hours during the week. You are paid \$ 10 an hour.

Question 1 : **How much must your employer pay you, gross wages, for your workweek?**

Question 2 : **You ask for time off instead of cash for your overtime hours. You have the right to how many paid hours of time off?**

Question 3 : **Suppose you're paid every two weeks. Your employer has you work 32 hours the following week. How much will your paycheque amount to? Choose the right method of calculating your pay.**

METHOD 1

Total number of hours worked over the two weeks :

1st week	=	48 hours
2nd week	=	<u>32 hours</u>
Total	=	80 hours

You will be paid 80 hours x \$ 10 = \$ 800 for the two weeks.

METHOD 2

1st week

40 hours x \$ 10		\$ 400
8 hours x \$ 15	+	\$ <u>120</u>
Total for the 1st week		\$ 520

2nd week

32 hours x \$ 10	+	\$ <u>320</u>
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You will be paid a total of \$ 840 for the two weeks.

ANSWERS

EXERCISE 1

Answer : Both employers are violating the law.

EXERCISE 2

Answer : B) after 40 hours

EXERCISE 3

Answer : No (unless your work contract provides otherwise).

EXERCISE 4

Question 1

Overtime rate = regular rate X 1.5, so $\$ 10 \times 1.5 = \$ 15$

Here is what your employer owes you :

40 hours X \$ 10	\$ 400
8 hours X \$ 15	+ \$ 120
Total	<u>\$ 520</u>

Question 2

If the employer agrees that you can take time off instead of overtime pay, you will be entitled to $8 \text{ hours} \times 1.5 = 12 \text{ hours}$ off paid at your regular rate.

Question 3

The second method is the right way to calculate your pay. Otherwise, the employer is depriving you of \$ 40 (difference between \$ 800 and \$ 840). The employer cannot claim you did not work overtime because $80 \text{ hours} \div 2 = 40 \text{ hours}$. The employer is not allowed to spread the hours you worked over two weeks to avoid having to pay you time and a half, unless he gets special permission from the *Commission des normes du travail*.

RESOURCES

Organizations that defend worker's rights

Association des aides familiales du Québec (AAFQ)

(514) 272-2670

www.aafq.ca

Immigrant Workers Centre (Centre des Travailleurs et Travailleuses Immigrants) (CTI)

(514) 342-2111

www.iwc-cti.ca

Comité d'action des non-syndiqués (CANOS)

(Trois-Rivières region)

(819) 373-2332

www.canosmauricie.org

Groupe d'aide et d'information sur le harcèlement au travail

(psychological or sexual harassment)

(514) 526-0789

www.gaihst.qc.ca

Illusion-Emploi (Sherbrooke region)

(819) 569-9993

www.illusionemploi.org

Government agencies

Commission des normes du travail (CNT)

(514) 873-7061

1 800 265-1414

www.cnt.gouv.qc.ca

Commission des relations du travail (CRT)

(514) 864-3646

1 866 864-3646

www.crt.gouv.qc.ca

Human Resources and Skills Development Canada

Labour Program

1 800 641-4049

www.rhdcc.gc.ca

Quebec Parental Insurance Plan

1 888 610-7727

www.rqap.gouv.qc.ca/index_en.asp

Au bas de l'échelle

A grassroots organization defending the rights of non-unionized workers

We can help!

- Telephone hot line
- Workshop (2 – 3 hours) on the *Act respecting Labour Standards*
- Workshop (3 hours) on the *Act respecting Labour Standards* and the recourse in case of workplace psychological harassment
- One-day workshop for unionized worker representatives or community workers
 - Informative document on labour laws

“L’ABC des personnes non syndiquées : Vos droits au travail” (15\$ + mail fees)

You can support our political work in defence of worker’s rights by becoming a member of *Au bas de l'échelle* or making a donation. We will send you a charitable receipt for any donations of \$10 or more.

To find out more or to get in touch, check our website or give us a call.

www.aubasdelechelle.ca

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