

## NOVEMBER 2023 MONTH IN REVIEW

# Québec

### **LAWS & ANNOUNCEMENTS**

#### **New Laws**

Oct 27: That's the deadline to comment on proposed changes to the Québec [Construction Code](#) and [Safety Code](#) that would create a maintenance control program designed to keep elevators and other elevating devices in safe working order, while also aligning the rules of the two Codes.

#### **Material Handling**

Sep 28: CNESST published the results of its investigation into the workplace death of a material handler crushed by a load that fell from a forklift, listing inadequacy of the unloading procedure and the lack of supervision as causes. After the incident, CNESST banned the employer from using the Raymond brand narrow aisle forklift, EASI model.

**Action Point:** Use the resources on the OHSI Material Handling [Compliance Center](#) to avoid similar tragedies at your workplace

#### **Young Workers**

Oct 5: For the second year in a row, CNESST will send its Youth Prevention Squad to secondary schools to raise safety awareness among young people registered in the Employment-Oriented Training Program (PFAE).

**Action Point:** Implement a [new and young workers safety and compliance game plan](#)

#### **Infectious Illnesses**

Oct 10: Québec launched its free COVID-19 and influenza vaccination program for the general population. Vaccines in senior homes and other residential settings with vulnerable populations began on October 2.

## Drugs & Alcohol

Oct 5: Newly tabled [Bill 35](#) would give the provincial government the right to sue manufacturers and distributors of opioid drugs liable for the costs of health care and related damages incurred as a result of those products. While patterned on similar legislation in other jurisdictions, the bill is tailored to Québec's civil liability system.

**Action Point:** Find out [how to implement a naloxone program to](#) respond to opioid overdoses at your site

## New Laws

Sep 26: Québec has asked the Commission of Labour Market Partners for an opinion on how the closed TFWP work permit has affected the province's labour market and how to improve better working and living conditions of temporary foreign workers.

## Workers Comp

Oct 4: CNESST published extensive [changes](#) to the *Financing Regulation* affecting, among other things, classification unit contribution rates, experience ratios used to calculate employers' personalized rates, the lump sum amount used to establish the contribution of the employer of a student who completes an unpaid internship, the annual fixed rate, the personalized rate threshold and the insurance premiums necessary for retrospective adjustment of the contribution.

## CASES

### Traffic Control: Employer Didn't Use Due Diligence to Prevent Traffic Control Violation

A CNESST inspector spots workers picking up waste in a busy Montreal street without traffic being blocked and cites their employer for an OHS violation. The employer insists that one of the workers in the inspector's photos was an ex-employee related to a current worker. But the Court of Québec finds the story about the worker's being there picking up garbage of his own accord "improbable," especially since he's wearing the same orange bib as the other workers. There's also plenty of other evidence to support the inspector's contention that the workers were endangered by traffic. Nor did the employer use due diligence to prevent the offence. There was

a safety training program, the Court acknowledged, but the employer put it in place only **after** the violation occurred [*CNESST c. Plateau Sanitaire inc.*, 2023 QCCQ 6208 (CanLII), September 21, 2023].

**Action Point:** Use the [OHSI Due Diligence Scorecard](#) to assess the adequacy of your own OHS program

### **Discipline: Arbitrator Reinstates Worker Fired for Secretly Working While on Disability**

The City of Longueuil fired a roads worker for carrying out a personal landscaping business while on disability leave for depression. You lied to us—and your doctor—when you said that you were incapable of carrying out regular road work and lifting heavy objects, the City concluded. But the Québec arbitrator found the evidence demonstrated “a completely different reality.” The doctor stood by her diagnosis and prescription of 6 weeks’ rest. And the activity the worker engaged in while on leave wasn’t necessarily inconsistent with that diagnosis, especially given the evidence of improvement in the worker’s condition after leave began. But while the City’s conclusion that the worker lied about his condition was unjustified, his failure to tell the whole truth and attempts to conceal the landscaping work he was doing were grounds for a 4-week suspension, the arbitrator concluded [*Longueuil (City) v CUPE, local section 307*, 2023 CanLII 88152 (QC SAT), September 26, 2023].

### **Return to Work: Medical Concerns Justify Refusal to Let Injured Worker Return to New Position**

After months of leave, a social work technician who suffered injuries in a pair of criminal attacks began her gradual return to work. Things went well for the first 2 years with the technician often putting in 4 days a week doing her previous job. She then transferred to a different position that she felt she’d eventually be able to perform full-time. But the employer had concerns about her ability to do that job. First return full-time to your previous job and then we’ll do a medical assessment of your fitness for the other position, it proposed. The union claimed that refusing to allow a gradual return to work to the new position violated the collective agreement and constituted disability discrimination. The Québec arbitrator disagreed and dismissed the grievance. The employer’s concerns about the technician’s fitness for the new position were reasonable and legitimate as was its request that she provide more medical information so that a proper medical assessment could be made [*APTS – alliance of professional and technical health and social services personnel c Integrated university health and social services center of Mauricie-et-du-centre-du-Québec*, 2023 CanLII 82683 (QC SAT), September 8, 2023].

**Action Point:** Use the [OHSI Special Report on Return to Work](#) to get injured workers back quickly and safely