

## SEPTEMBER 2023 MONTH IN REVIEW

# Québec

### **LAWS & ANNOUNCEMENTS**

#### **Machine Safety**

Jul 12: CNESST proposed draft [changes to OHS regulations](#) governing the safe design, manufacture, modification, use, maintenance and repair of machinery at industrial establishments and construction projects to align Québec rules with Canadian and international standards and clarify the roles of employers, supervisors, workers and other stakeholders.

**Action Point:** Use the [OHSI machine guarding policy template](#) to prevent machine tragedies and OHS violations at your workplace

#### **Transportation Safety**

Aug 7: With the construction holidays coming to an end, CNESST called on employers and motorists to be extra vigilant near construction sites. In 2022, there were an alarming 215 workplace injuries to road signallers in Québec, an increase of 258% as compared to 2017.

**Action Point:** Find out about the [traffic signaling and control requirements](#) across Canada

#### **Drugs & Alcohol**

Aug 2: New *Tobacco Control Act* regulations tightening restrictions on vaping products take effect in Québec on October 31. Highlights:

- Ban on sale of non-tobacco flavored or aroma vaping products
- Maximum nicotine concentration limit of 20 mg/ml

- New obligation to display certain information on vaping products and packaging.

**Action Point:** Use the [OHSI Substance Abuse Compliance Game Plan](#) to curb drugs and alcohol at your workplace

## Environmental

Sep 1: September 1<sup>st</sup> is the deadline to [submit feedback](#) on a consultation to tackle [textile waste](#), the fifth-largest category of plastic waste in landfills. The plan focuses on redesigning, reducing, reusing, repairing, and recycling textiles to reduce plastic microfibre pollution.

## CASES

### Due Diligence: Failure to Enforce Safety Policy Dooms Contractor's Due Diligence Defence

We have a detailed prevention policy, and we enforce it with an iron fist. So argued a roofing contractor cited by CNEST for OHS violations after an inspector observed several roofers working without proper fall protection. But the Québec court rejected the contractor's due diligence defence. Although workers signed the policy, they couldn't tell the inspector exactly what it required with regard to fall protection. Moreover, the contractor's claims about the policy's being zero tolerance didn't jibe with the actual disciplinary records showing that workers got away with safety violations, including failure to properly use required fall protection equipment [[CNEST c. 9269-2110 Quebec inc. \(Renaud Toit\)](#), 2023 QCCQ 4627 (CanLII), July 14, 2023].

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

### Drugs & Alcohol: Automatically Firing Alcoholic for Drunk Driving Violates Duty to Accommodate

A company figured it had just cause to terminate an employee arrested by the police for driving a heavy truck with a blood alcohol content well above the legal limit, especially since the driver admitted she was drinking beer and the collective agreement provided for termination as the penalty for impaired driving, even if it was a first offence. The legal sticking point was the driver's admission to having an alcohol abuse problem, a disability under human rights law. A pre-determined penalty in a collective agreement doesn't trump the employee's right to reasonable accommodations to the point of undue hardship, the Québec arbitrator reasoned.

Upon learning of the employee's alcohol problem, the company should have activated the accommodations process before deciding to end her employment [[Teamsters Quebec, Local 106 c 1641-9749 Quebec inc.](#), 2023 CanLII 66780 (QC SAT), July 18, 2023].

**Action Point:** Create a legally sound [drugs and alcohol testing policy](#) for your workplace

### **PPE: Refusal to Wear COVID-19 Facemask Not Grounds for Terminating Food Worker**

Did an agri-food plant have just cause to fire a worker for repeatedly refusing to wear a facemask during the COVID pandemic? The Québec arbitrator said no. Deliberate defiance of the mandatory facemask policy was a serious offence warranting a severe penalty, especially at a public health-sensitive workplace like a food plant. The worker's arrogance and disdain for authority did little to help the union's case. However, the arbitrator concluded that termination was a "disproportional" and reduced the penalty to a one-year suspension [[Union of Agri-Food Employees of Ste-Claire v \(CSD\) Kerry \(Canada\) Inc.](#), 2023 CanLII 72157 (QC SAT), August 10, 2023].