

JANUARY 2023 MONTH IN REVIEW

Québec

LAWS & ANNOUNCEMENTS

JHSCs

Jan 1: [New OHS rules](#) require project managers at any construction site where at least 20 construction workers will be present at the same time to form a site committee consisting of a: i. OHS coordinator or representative of the main contractor (for sites with over 100 workers or over \$12 million in value); ii. a representative for each employer; iii. a health and safety representative; and iv. a representative of each representative association of which at least one affiliated construction worker is present at the site.

Action Point: Does your workplace [have to establish a JHSC](#)? Find out

New Laws

Jan 1: Under [new OHS rules](#), the principal contractor of a construction site where at least 100 construction workers work simultaneously or costs of work exceed \$12 million must appoint a health and safety coordinator to monitor safety, perform workplace inspections and investigations and participate in creating and updating the site prevention program.

New Laws

Jan 1: Effective today, project managers of [construction sites](#) where 10 or more construction workers are expected to be present at the same time must create a prevention program during project planning. If 20 or more workers are expected to work at the site, the project manager must send the prevention program to CNEST before work starts.

Pregnant Workers

Jan 1: New [OHS rules](#) clarifying how health professionals must issue certification of a pregnant or breastfeeding workers need for protective reassignment take effect.

Action Point: Find out about [OHS law protections for pregnant and breastfeeding workers](#) across Canada

New Laws

Dec 1: Effective April 6, there will be a 60-day deadline for employers to contest a CNESST decision to the Administrative Labour Tribunal for administrative review.

Workplace Violence

Dec 5: Victims of domestic violence who don't want to file a complaint with the police can now talk directly to a prosecution lawyer about their case via the Director of Criminal and Penal Prosecutions new free and confidential sexual violence information line, 1 877-547-DPCP.

Action Point: Implement a [legally sound policy](#) to protect workers from domestic violence at the workplace

CASES

Drugs & Alcohol: Employer Doesn't Have to Let Safety-Sensitive Worker Smoke Pot Off Duty

Reeking of pot at work is never a good thing, especially for a worker who has completed rehab for marijuana use and holds a safety-sensitive job as a warehouse forklift operator. The warehouse offered him a last chance agreement allowing him to keep his job if he totally abstained from marijuana use. But the worker declined the deal because he wanted to be able to smoke pot recreationally after work. So, the company fired him. The Québec arbitrator upheld the decision. There were a lot of mitigating factors—the worker disclosed his marijuana use, developed his own treatment plan, and had no attendance or disciplinary issues. However, the evidence suggested that even offsite use of marijuana by workers during nonwork hours could create a danger and the employer had a right to demand that he remain abstinent to ensure workplace safety [[Syndicate of workers of Colabor Lévis v Groupe Colabor inc.](#), 2022 CanLII 108280 (QC SAT), November 14, 2022].

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

Drugs & Alcohol: Employer Not Obligated to Cover Medical Marijuana in Prescription Drug Plan

A part-time professor filed a grievance against the university after learning that his employer-provided prescription drug coverage plan didn't cover the medical marijuana he needed to treat his sleep disorder. The university contended that the collective agreement required it to provide a plan covering "prescription drugs," defined as those that have a Health Canada Drug Identification Number (DIN). And since medical cannabis doesn't have a DIN, the university had no obligation to cover it. The Québec arbitrator agreed and tossed the grievance [[*Association of Part-Time Professors of Concordia University v Concordia University*](#), 2022 CanLII 116822 (QC SAT), December 8, 2022].

Due Diligence: Contractor Didn't Take Reasonable Steps to Prevent Flying Formwork Incident

A union rep visiting a construction site observes a wooden board swirling in the wind before crashing down near the workers. He notifies CNESST, who then issues a stop work order and cites the employer for failing to ensure the work was carried out safely. The contractor denies any wrongdoing and assures the inspector that it's secured all of the boards with ropes to prevent a recurrence. The inspector lifts the order but not the citation. The Court of Québec upholds the citation, ruling that the incident was foreseeable and that the contractor didn't use due diligence or take reasonable steps to prevent it until after the incident occurred [[*CNESST c. Coffrage Alliance Itée*](#), 2022 QCCQ 8804 (CanLII), November 28, 2022].