

Employment & Labor: North America

State snapshot

Key considerations

Which issues would you most highlight to someone new to your state?

Canada > Quebec

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Because of Canada's unique constitutional division of powers between the federal and provincial governments, most employers in Quebec are covered by provincial legislation, although some are covered by federal legislation. The nature of an employer's business is critical in determining whether federal or provincial legislation applies. For most employers engaged in the manufacturing, construction, retail and service sectors, provincial law applies. For employers engaged in certain inter-provincial activities – such as radio and television broadcasting, banking, shipping and rail, air and inter-provincial transportation generally – federal law applies.

There is no at-will employment in Canada. Rather, employment relationships are contractual. Unless there is a written contract that addresses termination, the Act Respecting Labour Standards requires that employers provide written notice to employees before terminating their employment (the required length of notice depends on the employee's number of uninterrupted years of service). Further, the Quebec Civil Code requires that employers provide employees with reasonable notice of termination or pay in lieu of notice if the employment relationship is terminated without cause.

In their application of the Quebec Civil Code, the courts are generous when prescribing the length of the termination notice that an employer must give managerial, professional or long-term employees where there is no contractual provision on the matter. Although courts approach each case on an individual basis, case law suggests that a starting point for reasonable notice is one month or pay in lieu of notice for each year of service up to a maximum of two years (although this is not a firm upper limit).

Federally and provincially regulated employers in Quebec are subject to special scrutiny when dismissing non-managerial employees without just cause and the courts may seek reinstatement. However, employers can dismiss such workers due to lack of work or the discontinuance of a function.

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What do you consider unique to those doing business in your state?

Canada > Quebec

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The major difference between Canada (including Quebec) and the United States is the lack of at-will employment in Canada. Hence, severance packages in Canada are often much higher than in the United States. Non-unionised employees in Quebec with two or more years' service also have union-like just cause protection under the applicable employment standards legislation.

Further, non-competition and non-solicitation provisions in employment agreements are considered to be in restraint of trade by Canadian courts and therefore unenforceable unless the employer can establish that they are reasonable in terms of the activity covered and their geographic scope and duration. An employer cannot avail itself of a non-competition provision if it has terminated the employment relationship without cause.

Quebec also has French language legislation which requires employers to communicate with their employees and make relevant documentation available in French.

An executive's right to receive and exercise stock options or other incentive compensation on termination of an employment relationship is subject to the relevant provisions of the employer's stock option plan. These plans typically provide that an executive's options cease to vest on termination of employment. However, the Canadian courts have interpreted the term 'termination of employment' in such plans to mean lawful termination. Accordingly, to be lawful, termination of employment occurs only at the end of a period of reasonable notice, thus entitling the employee to claim damages for the lost opportunity to exercise options to which he or she would have been entitled during the notice period. In many cases, the courts have found that where a stock option plan contains no clear triggering event, the

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effective termination of employment date is that on which the executive would have ceased to be an executive had they been given reasonable notice. Accordingly, to ensure the correct interpretation of a stock option or other incentive compensation plan, an employer should ensure that its plans and any related documentation are clearly drafted. Employers should also specify in employment contracts that the term 'termination of employment' in its stock option and other plans means the actual date on which formal notice of termination is given to the executive.

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Is there any general advice you would give in the labor/employment area?

Canada > Quebec

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New businesses should hire employees under written employment contracts that contain provisions dealing with entitlements and obligations when the employment relationship is terminated.

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Emerging issues

What are the emerging trends in employment law in your state, including the interplay with other areas of law, such as firearms legislation, legalization of marijuana and privacy?

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Privacy

The Act Respecting the Protection of Personal Information in the Private Sector (Quebec) covers private sector employers and regulates the protection of personal information that an employer collects, holds, uses or communicates to third persons in the course of carrying on its business. The Civil Code of Quebec and the Quebec Charter of Human Rights and Freedoms also provide certain privacy rights to employees.

Federally regulated private sector employers are covered by the Personal Information Protection and Electronic Documents Act (Canada), which regulates the collection, use, retention, safeguarding and disclosure of employees' personal information.

Constitutional protection of union activities

The Supreme Court of Canada recently reversed its earlier case law and found that many traditional union activities, like collective bargaining and legal strikes, are constitutionally protected.

Workplace investigations

The effectiveness of the employer internal investigation process has faced increasing scrutiny in the courts. Recently, because of a poor investigation, a trial judge ordered Wal-Mart to pay C\$1.2 million in punitive and aggravated damages, although this was later reduced to C\$300,000 on appeal. A proper investigation may substantially reduce or eliminate liability in any case relating to an alleged violation of human rights (anti-discrimination) legislation.

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Proposals for reform

Are there any noteworthy proposals for reform in your state?

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Whistleblower protections

On June 20 2016 Quebec's *Autorité des marchés financiers* (AMF) officially launched its whistleblower programme. The AMF adopted an approach based on confidentiality, anti-reprisal measures and anonymity for whistleblowers who denounce violations of securities laws. The AMF has thus rejected the rewards-based approach adopted in other jurisdictions.

Canada/Quebec pension plans

On June 20 2016 Canada's finance minister and several provincial finance ministers announced their agreement in principle to enhance the Canada Pension Plan from January 1 2019.

Quebec has expressed that it will organise a public consultation to assess whether a similar reform should be implemented regarding the Quebec Pension Plan.

Voluntary retirement savings plans

A new requirement for Quebec employers to join and enrol their employees in a voluntary retirement savings plan (VRSP) is gradually being phased in. A VRSP is a retirement savings plan administered by a financial institution in which employees are automatically enrolled. Employees can opt out if they wish. The requirement to offer a VRSP applies where the employer has a group of employees who are ineligible to participate in a registered pension plan, group retirement savings plan or group tax-free savings account. A VRSP must be made available to these employees by:

- December 31 2016 if there are 20 or more employees;
- December 31 2017 if there are 10 to 19 employees; or
- December 31 2018 if there are five to nine employees.

Employers with fewer than five employees are exempt from the requirement to offer a VRSP. Employers can, but are not required to, contribute to the VRSP.

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Employment relationship

State-specific laws

What state-specific laws govern the employment relationship?

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Quebec's major employment-related statute is the Act Respecting Labour Standards. Other important statutes affecting employers include:

- the Quebec Civil Code;
- the Charter of Human Rights and Freedoms;
- the Act Respecting Occupational Health and Safety;
- the Act Respecting Industrial Accidents and Occupational Diseases;
- the Labour Code;
- the Charter of French Language;
- the Act Respecting the Protection of Personal Information in the Private Sector;
- the Code of Civil Procedure;
- the Pay Equity Act;
- the Regulation Respecting Eligible Training Expenditures;
- the Regulation Respecting the Determination of Total Payroll;
- the National Holiday Act;
- the Public Service Act;
- the Act Respecting Manpower Vocational Training and Qualification;
- the Act Respecting Hours and Days of Admission to Commercial Establishments; and
- the Act Respecting the Process of Negotiation of the Collective Agreement in the Public and Parapublic Sectors.

A number of other laws affect public sector and broader public sector employers in Quebec.

For federally regulated employers, the main statute is the Canada Labour Code, although other federal legislation also governs the workplace (eg, the Canadian Human Rights Act and the Personal Information and Protection of Electronic Documents Act).

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Who do these cover, including categories of workers?

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In general, the above laws cover employees; however, because the laws governing employment relationships are public welfare laws, the courts have held that the term 'employee' must be broadly and liberally interpreted. Therefore, depending on the circumstances, the definition of an 'employee' can include:

- persons whom the employer treats as independent contractors;
- consultants;
- interns;
- employees of affiliated employers; and

- employees of temporary help agencies.

Health and safety laws have been interpreted to include self-employed individuals and independent contractors in the definition of a 'worker'.

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Misclassification

Are there state-specific rules regarding employee/contractor misclassification?

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Yes. Further, the rules or approach can differ between a variety of agencies (eg, tax and health and safety), depending on the object or purpose of the specific legislation.

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Contracts

Must an employment contract be in writing?

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No. However, all employees have a contract which, in many cases, is:

- partially oral;
- partially written (eg, the offer letter and holiday policy); and
- partially implied by law (eg, the employee's duty of loyalty and the employer's duty to provide reasonable notice of termination, except where there is just cause).

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Are any terms implied into employment contracts?

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Yes. The major implied terms are:

- the employee's duty of loyalty; and
- the employer's obligation to provide reasonable notice of termination, except where there is just cause.

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Are mandatory arbitration agreements enforceable?

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Yes. However, arbitration agreements may not be able to exclude the jurisdiction of statutory agencies, such as the Human Rights Commission.

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How can employers make changes to existing employment agreements?

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If a material change is made to an existing employment agreement without the employee's consent, the employee can quit and may be able to sue for constructive dismissal or claim damages for breach of contract. Agreed changes should be supported by an exchange of consideration. Changes can be made unilaterally if notice under the contract or reasonable notice is provided.

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Hiring

Advertising

What are the requirements relating to advertising open positions?

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Job ads should comply with human rights legislation and should generally contain no statements, qualifications or references that directly or indirectly relate to protected grounds. Under accessibility legislation, employers must state that they will accommodate interested candidates with a disability during the hiring process.

One important difference under Quebec law is the potential application of the Charter of the French Language. For instance, an employer cannot make knowledge of the English language a condition for obtaining employment, unless the nature of the job's duties requires such knowledge. In general, employees who work in retail and interact with customers can be expected to have at least a basic knowledge of English in order to serve customers in either language. Further, written communications with employees, including notices, offers and employment forms, may have to be drafted in French.

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Background checks

What can employers do with regard to background checks and inquiries?

(a) Criminal records and arrests

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To avoid a discrimination complaint, all background checks, including criminal record checks, should be performed only after a conditional offer of employment has been extended. There is a standardised process for conducting searches in a federal criminal records database. However, individuals cannot be discriminated against based on convictions for criminal offences which have been pardoned or provincial regulatory offences unless there is a *bona fide* occupational requirement (eg, the job involves working with vulnerable persons).

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(b) Medical history

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In general, medical history should not be considered during the hiring process unless there is a *bona fide* occupational requirement. Pre-employment medical testing can be requested in some circumstances after a conditional offer of employment has been extended.

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(c) Drug screening

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Drug and alcohol testing is a contentious issue in Canada because:

- addiction is seen as a disability under human rights law; and
- it has been held that drug testing does not determine whether an employee is impaired while at work.

According to the Commission on Human Rights and Youth Rights, drug testing is likely to interfere with the rights to personal inviolability (ie, safeguarding one's dignity and respect for one's private life), which is provided for in Quebec legislation. This interference with fundamental rights stems from:

- the intrusive nature of the testing;
- the personal information that may be discovered, recorded and revealed during the analyses; and
- the fact that it is potentially discriminatory.

Federally, random drug testing of employees is viewed as discriminatory (even for safety-sensitive positions) because it does not reflect actual or future impairment on the job. An employee could have used a substance days or weeks before the day of testing and there may still be evidence of it at the time of testing. Random alcohol testing for safety-sensitive positions may be acceptable in some cases, but the Supreme Court of Canada recently upheld an arbitrator's decision striking down random alcohol testing for safety-sensitive positions.

Even testing that measures impairment can be justified only if it is demonstrably connected to the performance of the job – for example, after significant accidents or near misses. This post-incident drug and alcohol testing must generally be part of a larger employee rehabilitation programme.

The approach taken by most Canadian adjudicators is that drug and alcohol testing is inherently discriminatory and can be used only in limited circumstances. The primary reason for conducting such testing should be to measure impairment.

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(d) Credit checks

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For provincially regulated employers, it is best practice to conduct credit checks only where it is reasonable to do so (eg, where the employee is handling, and responsible for, large sums of money or valuables).

Federally regulated employers are governed by the Personal Information Protection and Electronic Documents Act and are permitted to request credit checks only where it is reasonable to do so.

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(e) Immigration status

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Employers can require proof of an individual's legal ability to work in Canada as a condition of his or her employment, but are prohibited under human rights legislation from inquiring as to an individual's citizenship or national or ethnic origin.

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(f) Social media

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Social media checks in the pre-hiring stage increase the risk of a discrimination complaint as a candidate's social media profile may disclose information concerning a prohibited ground under human rights legislation.

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(g) Other

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Not applicable.

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Wage and hour

Pay

What are the main sources of wage and hour laws in your state?

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The Act Respecting Labour Standards is the main law regulating wages and working hours.

For federally regulated businesses, Part III of the Canada Labour Code applies.

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What is the minimum hourly wage?

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The majority of employees are entitled to the minimum wage, which is set by the Quebec government. As of May 1 2016, the minimum hourly rate is C\$10.75.

The minimum hourly rate for employees receiving tips is C\$9.20.

No employer can remunerate an employee at a lower rate than that granted to other employees performing the same tasks, in the same establishment, for the sole reason that the employee usually works fewer hours each week, unless the rate of pay for such an employee is more than twice the rate of the minimum wage.

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What are the rules applicable to final pay and deductions from wages?

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Provincial rules

Wage deductions can be made where authorised by a:

- law;
- regulation;
- court order;
- collective agreement;
- decree; or
- mandatory supplemental pension plan.

Any other wage deduction can be made only with the employee's written authorisation.

Federal rules

Employers cannot make deductions from wages or other amounts owed to an employee except under certain permitted instances, including when the deductions:

- are made to cover payments that have been authorised by a federal or provincial act or regulation;
- have been authorised by a court order, collective agreement or other document signed by a trade union on behalf of an employee;
- have been authorised by an employee in writing; or

- are to repay an employer for an overpayment of wages.

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Hours and overtime

What are the requirements for meal and rest breaks?

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Provincial rules

A 30-minute unpaid meal period must be provided after five hours of work, although this can be split into two 15-minute breaks with the employee's agreement. The employee must be paid for this period if he or she is unable to leave his or her work station.

Federal rules

There are no prescribed rest periods for federally regulated employees. However, most employers follow provincial guidelines for safety and employee relations purposes.

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What are the maximum hour rules?

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Provincial rules

Quebec law provides for no maximum working hours. However, employees can refuse to work:

- more than 50 hours in the same week; and
- more than four hours after their regular daily working hours or more than 14 hours per 24 hours, whichever is the shortest.

An employee whose hours are flexible or non-continuous can refuse to work more than 12 hours per 24 hours.

The normal working week is 40 hours, although different rules apply to certain industries (eg, the fashion industry).

Further, there is no minimum amount of hours that constitutes a working week. However, an employee who reports to work at the express request of his or her employer or in the normal course of his or her employment and who does not work or works fewer than three consecutive hours is entitled to an indemnity equal to three hours of pay at his or her regular wage.

Federal rules

Employees of federally regulated employers cannot work more than 48 hours per week. However, there are special rules for certain workers in various industries (eg, trucking, shipping and railways).

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How should overtime be calculated?

Canada > Quebec

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Provincial rules

Overtime must be paid for all hours worked in a week in excess of 40, unless a collective agreement, a decree or the Committee on the Standards and Equity of Occupational Health and Safety authorises the staggering of an employee's working hours other than on a weekly basis, provided that the average is of 40 hours per week.

Overtime is calculated as one-and-a-half times the employee's regular rate for all hours worked in excess of the hours of their normal work week. Special rules exist for certain industries and if the employer does not have a regular pay rate.

Federal rules

For employees of federally regulated employers, overtime is calculated at one-and-a-half times the employee's regular rate applied to all hours worked in excess of eight per day and 40 per week.

What exemptions are there from overtime?

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Provincial rules

The terms 'exempt' and 'non-exempt' are not used in Canada to differentiate between employees.

Pursuant to the Act Respecting Labour Standards, overtime does not apply to:

- students employed in a vacation camp or social or community non-profit organisation, such as a recreational organisation;
- the managerial personnel of an enterprise;
- employees who work outside the establishment whose working hours cannot be controlled;
- employees assigned to canning, packaging and freezing fruits and vegetables during harvest periods;
- employees of the fishing, fish processing or fish canning industries;
- farm workers; and
- employees whose exclusive duty is to provide care to a child or to a sick, disabled or elderly person in that person's dwelling, including, where required, performing domestic duties that are directly related to the immediate needs of that person, unless the work serves to procure profit for the employer.

With respect to the managerial personnel of an enterprise, the Act Respecting Labour Standards provides no guidance on when an employee is considered to be managerial personnel. An employee's title or status is not necessarily relevant.

Quebec case law provides general factors that are considered when assessing whether an employee performs managerial work, including his or her:

- decision-making power;
- hierarchy;
- status or title;
- relationship with senior management;
- functions and responsibilities; and
- employment conditions.

Essentially, an adjudicator will look at whether the person in question has decision-making powers and acts as the employer's representative in its relationship with other employees. The application of the above factors will vary from case to case.

Federal rules

The Canada Labour Code states that the standard hours of work and overtime do not apply to:

- managers or superintendents; or
- employees who exercise management functions or are members of the architectural, dental, engineering, legal or medical professions.

The test for the managerial exemption is, generally speaking, similar under federal law.

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Record keeping

What payroll and payment records must be maintained?

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Provincial

Employers must maintain employee records that include:

- the employee's full name;
- the employee's residential address and social insurance numbers;
- the employee's title or position;
- the date on which the employee started working for the employer; and
- the following particulars, as relevant, for each pay period:
 - the employee's total number of working hours per day;
 - the employee's total number of working hours per week; the employee's total number of overtime hours paid or compensated for by a day off with the applicable premium;
 - the employee's number of workdays per week;
 - the employee's wages;

- the nature and amount of premiums, indemnities, allowances and commission paid to the employee;
- the employee's gross wages;
- the nature and amount of deductions made from the employee's wages;
- the net wages paid to the employee;
- the work period corresponding to payments;
- the date of payments;
- the reference year;
- the duration of the employee's annual holiday;
- the departure date of the employee's annual holiday with pay;
- the date on which the employee was entitled to a general holiday with pay or to another day of holiday, including the compensatory holidays for general holidays with pay;
- the tips reported by the employee;
- the tips attributed to the employee by the employer; and
- in the case of an employee under 18 years of age, his or her date of birth.

The records for a given year must be kept for three years.

Federal

There may be different record-keeping considerations for federally regulated businesses.

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Discrimination, harassment and family leave

What is the state law in relation to:

Protected categories

(a) Age?

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Age discrimination is prohibited under provincial and federal law.

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(b) Race?

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Racial discrimination is prohibited under provincial and federal law.

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(c) Disability?

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Under provincial and federal law, discrimination based on a 'disability' is prohibited. Under federal law, a 'disability' means previous or existing physical or mental issues and addiction.

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(d) Gender?

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Gender discrimination is prohibited under provincial and federal law.

(e) Sexual orientation?

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Sexual discrimination is prohibited under provincial and federal law.

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(f) Religion?

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Religion-based discrimination is prohibited under provincial and federal law.

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(g) Medical?

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It is prohibited to discriminate medically on the basis of a disability under provincial and federal law.

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(h) Other?

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Under Quebec law, discrimination based on the following grounds is prohibited:

- race;
- skin colour;
- gender;
- pregnancy;
- sexual orientation;
- civil status;
- age (except as provided by law);
- religion;
- political convictions;
- language;
- ethnic or national origin;
- social condition; and
- disability or the use of any means to alleviate a disability.

Under federal legislation, discrimination based on the following grounds is prohibited:

- race;
- national or ethnic origin;
- skin colour;
- religion;
- age;
- gender;
- sexual orientation;
- marital status;
- family status;
- disability; and
- a conviction for which a pardon has been granted or a record suspended.

Harassment

What is the state law in relation to harassment?

Canada > Quebec

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Under federal and provincial human rights laws, harassment as regards any prohibited ground of discrimination is prohibited and an employer may be held liable for harassment by one of its employees.

Under Quebec law, employers must provide employees with an environment that is free from psychological harassment. Although employers cannot guarantee that there will be no psychological harassment in their enterprise, they must:

- prevent any situation of psychological harassment through reasonable means; and
- act to stop psychological harassment as soon as they are informed of it by applying the appropriate measures, including the necessary penalties.

The Canada Labour Code requires that all federally regulated employers prepare sexual harassment policies and advise their employees of them. However, it is best practice to provide training and extend the harassment policy to cover all types of harassment and workplace violence.

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Family and medical leave

What is the state law in relation to family and medical leave?

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The unpaid statutory leave entitlements outlined below relate to provincially regulated businesses. Each category of leave is in addition to every other category of leave. There are minimum service requirements for some categories of leave.

Federal law provides different categories of statutory leave.

Pregnancy/parental leave

In Quebec, a pregnant employee is entitled to unpaid maternity leave of no more than 18 consecutive weeks, unless – on the employee's request – the employer consents to a longer period. Maternity leave cannot begin before the 16th week preceding the expected delivery date and should end no later than 18 weeks after the week of delivery.

An employee is entitled to unpaid paternity leave of no more than five consecutive weeks after the birth of his child. Paternity leave cannot begin before the week of delivery and should end no later than 52 weeks after that week.

All employees (both male and female) who have become the parent of a newborn child or who have adopted a child are entitled to parental leave without pay of no more than 52 consecutive weeks.

Parental leave may not begin before the delivery week or, in the case of adoption:

- the week in which the child is entrusted to the employee within the framework of an adoption procedure; or
- the week in which the employee leaves his or her work to travel to a place outside Quebec in order for the child to be entrusted to him or her.

Parental leave must end no later than 70 weeks after the delivery week or, in the case of adoption, after the child is entrusted to the employee.

However, subject to the conditions prescribed by regulation, parental leave may end at the latest 104 weeks following the delivery week or, in the case of adoption, after the child is entrusted to the employee.

Wedding or civil union leave

On the day of his or her wedding or civil union, an employee may be absent from work for one day without receiving reduced wages.

An employee may also be absent from work, without pay, on the day of the wedding or civil union of his or her child, parent or sibling or a child of his or her spouse.

Family medical leave

An employee may be absent from work, without pay, for 10 days per year to fulfil obligations relating to:

- the care, health or education of the employee's child or a child of the employee's spouse; or
- the health of the employee's spouse, parent, sibling or grandparent.

The leave may be spread over non-consecutive days.

Critical illness leave

An employee may be absent from work for a period of no more than 12 weeks over one year, during which he or she must, because of a serious illness or accident, stay with:

- his or her child, spouse, parent, sibling or grandparent;
- a child of his or her spouse; or
- the spouse of his or her parent.

However, if a minor child of the employee has a serious and potentially terminal illness, attested by a medical certificate, the employee is entitled to an extension of up to 104 weeks.

Bereavement leave

An employee may be absent from work for one day without receiving reduced wages due to the death or funeral of his or her spouse, child, parent or sibling or a child of his or her spouse. On such occasion, the employee may also be absent from work, without pay, for up to four additional days.

An employee may be absent from work for one day, without pay, due to the death or funeral of a child-in-law, grandparent or grandchild or the parent or a sibling of his or her spouse.

Leave for crime-related death or disappearance of spouse or child

An employee may be absent from work for no more than 52 weeks if the employee's minor child has disappeared. If the child is found before the expiry of the period of absence, that period ends on the 11th day following the day on which the child was found.

An employee may be absent from work for a period of no more than 104 weeks if the death of the employee's spouse or child occurs during, or results directly from, a criminal offence.

An employee may be absent from work for a period of no more than 52 weeks if the employee's spouse or child commits suicide.

Leave for sickness or organ donation

An employee may be absent from work for a period of no more than 26 weeks over a period of one year due to sickness, an organ or tissue donation for transplant or an accident.

However, an employee may be absent from work for a period of no more than 104 weeks if the employee suffers serious bodily injury during or resulting directly from a criminal offence that renders the employee unable to hold his or her regular position.

Reservist leave

An employee who is also a reservist in the Canadian forces may be absent from work, without pay, for one of the following reasons:

- if the employee is credited with one month of uninterrupted service to take part in a Canadian forces operation outside Canada – including preparation, training, rest and transportation from the reservist's place of residence and back – for a maximum of 18 months;
- to take part in a Canadian forces operation in Canada, the purpose of which is to:
 - provide assistance in the case of a major disaster within the meaning of the Civil Protection Act;
 - aid the civil power, on request of the Quebec attorney general, under the National Defence Act; or
 - intervene in any other emergency situation designated by the government;
- to take part in annual training for the period prescribed by regulation or, if no such period is prescribed, for no more than 15 days; or
- to take part in any other Canadian forces operation, in the cases, on the conditions and for the period prescribed by law.

Reinstatement after taking statutory leave in Quebec

Employees returning from statutory leave in Quebec are to be reinstated to their former position with the same benefits, including the wages to which they would have been entitled had they remained at work.

If the position held by the employee no longer exists when the employee returns to work, the employer must recognise all of the rights and privileges to which the employee would have been entitled if the employee had been at work when the position ceased to exist. This could mean that the returning employee must be reinstated to a comparable position at a wage rate equal to what was most recently earned or what the employee would have been earning had he or she worked through the leave – whichever is greater. Whether a position is comparable will depend on various factors, including:

- location;
- working hours;
- the quality of the working environment;
- the level of responsibility;
- job security;
- the possibility of advancement; and
- the job's prestige and perquisites.

The importance and weight to be afforded to each of these factors will vary from case to case, depending on the facts

in each situation.

No reinstatement obligation will apply where the employee is dismissed solely for reasons unrelated to the leave. If a complaint is brought against an employer, the employer's conduct and rationale will be subject to careful scrutiny. Under Quebec law, employment standards adjudicators have the power to order reinstatement.

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Privacy in the workplace

Privacy and monitoring

What are employees' rights with regard to privacy and monitoring?

Canada > Quebec

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Provincial rules

The right to privacy is a fundamental right protected by Quebec's Charter of Human Rights and Freedoms, which requires monitoring to be reasonable. Typically, video monitoring is permitted for safety or security reasons (eg, if money or property is stolen or if the employer needs to protect a trade secret). However, in some places (eg, bathrooms), cameras are never allowed. Video monitoring should be used only as a last resort and must not be used for productivity or performance issues.

Employees should be informed of the monitoring measures taken by their employer.

Federal rules

Federal privacy law and privacy commissioner decisions require monitoring to be reasonable. Typically, video monitoring is permitted for safety or security reasons in public cases. Video monitoring of work areas is much more controversial and must not be used for productivity or performance issues.

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Are there state rules protecting social media passwords in the employment context and/or on employer monitoring of employee social media accounts?

Canada > Quebec

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Provincial rules

There are no specific provincial rules protecting social media passwords.

As mentioned above, the right to privacy is a fundamental right protected by Quebec's Charter of Human Rights and Freedoms and regulated by the Quebec Act Respecting the Protection of Personal Information in the Private Sector. Social media monitoring increases the risk of discrimination complaints, as employers may inadvertently obtain information from social media accounts that discloses information concerning a prohibited ground under the charter.

Federal rules

The same human rights considerations apply to federally regulated employers. However, the federal privacy commissioner states that employers should have social media policies that advise employees as to whether social media will be monitored. Failure to warn employees that their personal information is being collected by way of social media monitoring could violate federal privacy legislation.

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Bring your own device

What is the latest position in relation to bring your own device?

Canada > Quebec

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Not applicable.

Off-duty

To what extent can employers regulate off-duty conduct?

Canada > Quebec

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In general, off-duty conduct is not an employer's concern. Quebec case law recognises a link between some types of misconduct and an employer's legitimate business interests – for example, an employer that conducts business activities relating to children may be justified in dismissing an employee who is charged with offences against children.

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Gun rights

Are there state rules protecting gun rights in the employment context?

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No.

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Trade secrets and restrictive covenants

Intellectual Property

Who owns IP rights created by employees during the course of their employment?

Canada > Quebec

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Employers generally own IP rights, although it is best practice to have employees sign ownership of inventions and IP agreements to avoid any disputes.

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Restrictive covenants

What types of restrictive covenants are recognized and enforceable?

Canada > Quebec

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Non-competition clauses

Under Quebec law, employers and employees can stipulate in writing and in express terms that, even after the termination of an employment contract, the employee shall neither compete with his or her employer nor participate in a competing enterprise.

However, the stipulation shall be limited – in regards to the duration, geographic scope and type of employment – to what is necessary to protect the employer's legitimate interests.

In Quebec, employers bear the responsibility of proving the validity of the non-competition clauses included in an employment contract unless they can establish that the covenant:

- is limited as to its duration;
- is limited as to its geographic scope;

- goes no further than is necessary to protect the rights which the employer is entitled to protect;
- does not unduly restrain the employee from making use of his or her skills and talent; and
- is not contrary to the public interest.

Because they restrict the right of employees to earn a living, non-competition clauses are narrowly construed by Quebec courts.

Further, an employer cannot avail itself of a non-competition covenant if it has terminated the employment contract without a serious reason.

The key question for employers to consider is whether there is some proprietary interest to justify a non-competition clause. Examples that a court might accept as reasons to enforce a non-competition clause include:

- a training programme or information given to the employee that is unique (or almost unique) to the employer; or
- some sort of client information or client system found only at the employer's premises.

For instance, non-competition clauses found in agreements for the purchase and sale of a business are more likely to be enforceable because:

- the courts consider that the parties in such cases are more likely to enjoy relatively equal bargaining power; and
- the clause may be necessary to ensure that the buyer's newly acquired business is not subverted by the previous owners, some of whom may be managers and executives.

Non-solicitation clauses

Quebec legislation does not contain express provisions in respect of non-solicitation clauses.

Case law suggests that while courts are quite adverse to non-competition clauses, they are more sympathetic and more inclined to enforce non-solicitation clauses. However, Quebec courts expect non-solicitation clauses to be limited in time and space. Further, before a non-solicitation clause is enforced by the courts, the employer must show that it is necessary in the context of the nature of the business carried on and the type of employment.

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Non-compete

Are there any special rules on non-competes for particular classes of employee?

Canada > Quebec

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The less important an employee is to the employer, the more difficult it will be for the employer to enforce a non-competition agreement.

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Labor relations

Right to work

Is the state a "right to work" state?

Canada > Quebec

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No. If the union collective agreement requires employees to be members of the union, the employer can only employ union members in the bargaining unit. The employer must agree to the union demand that all employees in the unit pay dues, but the employer is not required to agree that all employees must be union members.

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Unions and layoffs

Is the state (or a particular area) known to be heavily unionized?

Canada > Quebec

Overall, the unionisation rate of employees in Canada is approximately 30%, but the high level of unionisation in the public sector has a significant effect on the overall rate. In the private sector, approximately 16% of workers are unionised compared with approximately 70% in the public sector.

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What rules apply to layoffs? Are there particular rules for plant closures/mass layoffs?

Canada > Quebec

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Provincial rules

A collective dismissal occurs when an employer:

- dismisses 10 or more employees of the same establishment over two months; or
- lays off at least 10 employees of the same establishment for more than six months.

Quebec legislation establishes the process that must be followed and the time periods that must be respected when issuing a notice of collective dismissal. These time periods depend on the number of employees concerned and are as follows:

- eight weeks for 10 to 99 employees;
- 12 weeks for 100 to 299 employees; and
- 16 weeks for 300 employees.

The notice of collective dismissal must contain the following information, as provided for in the Act Respecting Labour Standards:

- the name and address of the employer or establishment concerned;
- the area of activity;
- the name and address of the employees' associations, where applicable;
- the reason for the collective dismissal;
- the planned date of the collective dismissal;
- the number of employees possibly affected by the collective dismissal.

The notice of collective dismissal must be posted in the workplace and sent to:

- the Ministry of Employment and Social Solidarity;
- the Committee on Standards, Equity and Health and Safety at Work; and
- the appropriate accredited union (if any).

The following employees are excluded from the application of notice of collective dismissal provisions:

- employees with less than three months of uninterrupted service;
- employees laid off for less than six months;
- employees of an establishment whose activities are seasonal or intermittent;
- employees whose contract for a fixed term or for a specific task expires;
- casual employees and students who work for the government and are covered by Section 83 of the Public Service Act;
- students who work for the government;
- employees of an establishment affected by a strike or lockout;
- employees who have committed a serious offence.

For unionised employees, layoffs are generally governed by the collective agreement.

Federal rules

If 50 or more employees are laid off or terminated within four weeks, notice of 16 weeks or more must be provided to the federal Ministry of Labour. This notice period is separate from the individual notice and statutory severance pay to which employees may be entitled. Federally regulated employees with at least 12 months' service are entitled to statutory severance pay of two days for each completed year of service or five days – whichever is greater.

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Discipline and termination

State procedures

Are there state-specific laws on the procedures employers must follow with regard to discipline and grievance procedures?

Canada > Quebec

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No, but case law regarding termination “with just and sufficient cause” strongly recommends that employers undertake an investigation and submit allegations to the employee in question, so that the employee can provide a response.

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At-will or notice

At-will status and/or notice period?

Canada > Quebec

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In Quebec, notice periods apply.

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What restrictions apply to the above?

Canada > Quebec

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In an employment contract, the employer and employee can agree as to the employee’s entitlements on termination if those entitlements satisfy at least the minimum requirements under applicable employment standards legislation. However, since the entitlement to a ‘reasonable’ notice of termination or indemnity in lieu of reasonable notice is a public order provision, the parties’ agreement will not be binding on the courts.

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Final paychecks

Are there state-specific rules on when final paychecks are due after termination?

Canada > Quebec

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On termination of an employment contract, the employer must ensure that the employee receives all of the sums owed to him or her.

Further, on request by the employee, the employer must provide him or her with a certificate of employment, stating only the nature and duration of the employment and indicating the identities of the parties involved. The employer must also provide the employee with a record of employment.

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