

Compensation Guide for Quebec Workers¹

0.0- General Introduction: Worker Compensation in Quebec

Before the first workers' compensation act was adopted in 1909, workers were restricted to suing their employers through the *Civil code of Lower Canada*, in order to be compensated for work injuries.² This regime required that proof be made of the employer's fault in addition to the relationship between that fault and the injury. Few workers could successfully prove these conditions, so most were left without compensation.³

Today, as long as the conditions for receiving compensation are satisfied, the worker is entitled to compensation paid by the *Commission de la santé et de la sécurité du travail* (CSST). This commission was constituted under the *Act Respecting Occupational Health and Safety*, and replaced the previous *Industrial Accidents Commission*.⁴ This board collects premiums paid by employers and compensates injured workers with these funds, and the rights and obligations of workers and employers are governed by the *Act Respecting Industrial Accidents and Occupational Diseases*.⁵ In exchange for their funding of the compensation system, employers are protected from lawsuits as their employees may never sue them under the Civil Code of Québec for damages related to an employment injury.⁶

Currently, Quebec workers who have incurred a work injury or an occupational disease are entitled to make claims under the *Act Respecting Industrial Accidents and Occupational Diseases*. Under **Article 1** of **AIAOD**: its object is to: *provide compensation for employment injuries and the consequences they entail for beneficiaries [including]: provision of necessary care...physical, social, and vocational rehabilitation...payment of income replacement indemnities, compensation for bodily injury, and death benefits...the act also entitles a worker who has suffered employment injury to return to work.*

1.0- Introduction: Conditions of compensation and definitions under the Act

a. Who is a worker?

The definition of a “worker” under article 2 of the *Act Respecting Industrial Accidents and Occupational Diseases* (AIAOD)⁷, in general, is a natural person who does work for an employer

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² Jean-Louis Baudouin, Patrice Deslauriers, Benoît Moore, *La responsabilité civile*, 8e édition - Volume 1 : Principes généraux, Les Éditions Yvon Blais, Cowansville : Qc, 2014. Par. 1050

³ *La Responsabilité Civile* (2014), J. Baudoin, par 1053

⁴ *La Responsabilité Civile* (2014), J. Baudoin par 1062; *Occupational Health and Safety Act*, CQLR c. S-2.1 (1979)

⁵ *An Act Respecting Industrial Accidents and Occupational Diseases*, CQLR c. A-3.001, (**AIAOD**), available at <http://www.canlii.org/en/qc/laws/stat/cqlr-c-a-3.001/latest/cqlr-c-a-3.001.html>

⁶ AIAOD, s. 438.

⁷ AIAOD, s.6

for remuneration under a contract of employment or of apprenticeship. There are a few exceptions:

1. A domestic;
2. A natural person engaged by an individual to care for a child or a sick, handicapped or aged person and who does not live in the dwelling of the individual;
3. A person who plays sports as his main source of income;
4. An executive officer of a legal person regardless of the work the executive officer does for the legal person;
5. A natural person if that person acts as a family-type resource or an intermediate resource.

In addition, a self-employed worker may be included in certain situations⁸ and those not included may choose to register and pay into the scheme with the Commission in order to have protection under the AIAOD.⁹

b. What is an employment injury?

An “employment injury” is an injury or a disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation.¹⁰ The concept includes both physical and mental health problems.

c. What is an industrial accident?

An “industrial accident” is a “sudden and unforeseen event, attributable to any cause, which happens to a person, arising out of or in the course of his work and resulting in an employment injury to him.”¹¹ This notion includes intentional acts. It is also important to note that there is a presumption that an injury that happens at the workplace while the worker is doing his or her job is presumed to be an employment injury.¹²

More specifically, an employment injury or disease is considered to be an employment injury if it arises out of or in the course of the care received by a worker for an employment injury or the lack of such care, or an activity prescribed to the worker as part of the medical treatment he receives for an employment injury or as part of his personal rehabilitation program.¹³

d. What is an occupational disease?

An “occupational disease” means “a disease contracted out of or in the course of work and characteristic of that work or directly related to the risks peculiar to that work.”¹⁴ A list of occupational diseases can be found in Schedule I of the AIAOD. The diseases listed in Schedule I are characteristic of the work appearing opposite each of such diseases on the schedule and are directly related to the risks peculiar to that work. A worker having contracted a disease

⁸ AIAOD, s. 9.

⁹ AIAOD, s. 18.

¹⁰ AIAOD, s. 2.

¹¹ AIAOD, s. 2.

¹² AIAOD, s.28.

¹³ AIAOD, s. 31.

¹⁴ AIAOD, s. 2.

contemplated in Schedule I is presumed to have contracted an occupational disease if he has done work corresponding to that disease according to the schedule.¹⁵ Workers can also file a successful claim for diseases to which the list does not apply, under section 30 of the Act, but in those cases the worker must prove the disease was contracted out of or in the course of employment and is directly related to the risks peculiar to that work or characteristic of that work.¹⁶

e. What are relapses, recurrences, and aggravations?

Although mentioned in the definition of employment injury, these three notions are not defined in the AIAOD. They have been defined in case law. As a whole, "...a recurrence, relapse or aggravation constitutes, among other things, a change in the worker's condition or an objective deterioration of his state of health, that is, the return and progress, reappearance or recrudescence of an injury or of its symptoms."(Singh et Refplus inc., 2012 QCCLP 6076, Par. 31). However, each notion must be looked at separately. In determining the relationship between the relapse, recurrence or aggravation and the initial injury, some of the criteria that are looked at include the following: the seriousness of the initial injury, the continuity of the symptoms, the existence of medical follow-up, the existence of permanent physical or mental impairment, among others. (Singh et Refplus inc., 2012 QCCLP 6076, Par. 33)

2.0 Territorial conditions and place of employer's establishment

If the worker is the victim of an industrial accident outside Québec or suffers from an occupational disease contracted outside Québec, the AIAOD applies if, when the accident occurs or the disease is contracted, the worker is domiciled in Québec and the employer has an establishment in Québec.¹⁷ If the worker's domicile is not in Québec, the AIOAD still applies if the employer has an establishment in Québec AND if the worker was domiciled in Québec at the time of assignment outside Québec, OR if the work outside Québec is for a duration of not more than five years when the accident occurs or the disease is contracted.¹⁸

3.0 Rights of the worker and nature of the benefits

a. Income Replacement Indemnity

From the day of the accident workers are entitled to salary replacement if the injury prevents them from doing their job. The employer must pay the worker 100% of salary owed for the day of the accident and 90% of net weighted salary for the first 14 days¹⁹. Workers who are not working at the time of the employment injury also have the right to salary replacement benefits

¹⁵ AIAOD, s. 29.

¹⁶ AIAOD, s. 30.

¹⁷ AIAOD, s. 8.

¹⁸ Ibid.

¹⁹ AIAOD, s. 44, 45, 60.

in some cases²⁰. Benefits for salary replacement are paid from the beginning of the disability until the earliest of three events: When the worker is again able to pursue his or her employment (if the job still exists), at the moment of the worker's death, or on the worker's 68th birthday²¹.

If, as a result of the employment injury, the worker is unable to return to the job performed at the time of injury, the law provides for the right to rehabilitation²², including vocational rehabilitation, and the CSST, in consultation with the worker, will prepare a personal rehabilitation program²³. Salary replacement benefits are payable while the worker is involved in that program, and full benefits may be payable up to 12 months after the worker becomes able to perform "suitable employment"²⁴ as defined in the personal rehabilitation plan. After that, the CSST will subtract a sum deemed to reflect the worker's earning capacity in the "suitable employment" whether or not they actually hold a job. If the worker does work while on benefits, the salary replacement benefit will be reduced accordingly²⁵.

aa. How is it calculated?

The income replacement indemnity is equal to 90% of the worker's weighted net annual income, and payment by the CSST begins 14 full days after the start of the disability, the employer having paid the first 14 days. The employer will be reimbursed by the CSST²⁶.

The weighted net annual income of the worker is calculated by making a series of deductions from the employee's gross annual employment income: taxable income for which the employee is usually liable to the federal and provincial government, employment insurance premiums, pension plan contributions, parental insurance premiums, and adjustments made in accordance with the worker's family situation (number of dependants).²⁷ The law provides for a minimum income replacement indemnity equal to the hourly minimum wage multiplied by the normal work week (40 hours)²⁸. The maximum income replacement indemnity will be based on the maximum insurable earnings which was set at \$70000 for 2015²⁹.

This indemnity is paid to the worker every two weeks in the form of a pension or instalment.³⁰ However, there are certain exceptional cases in which the replacement indemnity is paid in a lump sum, or at intervals that differ from the bi-weekly pension.³¹ These exceptions include

²⁰ AIAOD, s.44 (2).

²¹ AIAOD, s. 57. Note that special provisions (s. 48) apply if the worker's job no longer exists; at the age of 65 benefits are gradually reduced, except when the worker's injury occurs at the age of 65 or later. Again special provisions apply (s.56).

²² AIAOD, s. 145

²³ AIAOD, s. 146

²⁴ AIAOD, s.49

²⁵ AIAOD, s. 52.

²⁶ AIAOD, s. 45, 60.

²⁷ AIAOD, s. 63

²⁸ AIAOD, s. 6 and 65

²⁹ http://www.csst.qc.ca/en/workers/Pages/compensation_reimbursement_expenses.aspx

³⁰ AIAOD, s. 124,125

³¹ AIAOD, s. 131

indemnities for minimal amounts, workers not residing in Quebec, or based on the discretion of the CSST where they believe a capital sum would be in the interest of the worker.³²

The law provides for special rules to calculate the worker's gross income if the individual does seasonal work³³, works on call³⁴, works more than one job³⁵, is self-employed and covered under the Act³⁶, is unemployed at the time of the injury,³⁷ or when the worker suffers a relapse, aggravation or recurrence of a previous injury³⁸.

ab. Duration of payment

At the time of the initial injury, a worker is presumed unable to carry on his or her employment and is owed the income replacement indemnity until the employment injury is consolidated, unless there is evidence that the injury did not prevent the worker from doing his or her work.³⁹ Under the **AIAOD**, consolidation is defined as a state in which no improvement of the worker's health is foreseeable.⁴⁰ Once the injury is consolidated the CSST will determine if, in light of the information provided by the worker's treating physician, the worker is able to return to pre-injury employment. As we have seen, the employee is still entitled to compensation if rehabilitation is necessary to resume previous employment or to occupy suitable employment (see previous page).⁴¹

Where the worker has returned to work, and does not require rehabilitation to continue working, the right to a replacement indemnity ceases. Additionally, where the worker's physician issues a report indicating that the injury has consolidated and that no further rehabilitation will be necessary, the right to an indemnity is also terminated.⁴² If the worker is capable of returning to pre-injury employment, benefits will cease, unless that employment is no longer available⁴³, in which case further benefits may be payable⁴⁴.

From the outset, the employer may offer a temporary assignment of work that the worker is capable of doing despite the injury⁴⁵. If the worker's doctor approves the assignment and the worker undertakes that work, pre-injury earnings will be paid by the employer⁴⁶ instead of the income replacement indemnity.

³² AIAOD, s. 131

³³ AIAOD, s. 68

³⁴ AIAOD, s.68

³⁵ AIAOD, s.71

³⁶ AIAOD, s. 9 and s. 72

³⁷ AIAOD, s. 69

³⁸ AIAOD, s. 70

³⁹ AIAOD, s. 46

⁴⁰ AIAOD s. 2

⁴¹ AIAOD, s. 47

⁴² AIAOD, s. 132

⁴³ AIAOD, s.57

⁴⁴ AIAOD, s. 48

⁴⁵ AIAOD, s. 179

⁴⁶ AIAOD, s. 180

b. Permanent impairment rewards

Under the **AIAOD** where the worker suffers permanent physical or mental impairment as a result of the employment injury, they are entitled to an indemnity that considers their deficits and disfigurements and any resulting loss of enjoyment of life.⁴⁷ The value of the indemnity is the multiplication of the base values owed to a worker in relation to their age (listed in schedule II of the **AIAOD**), and the degree of the employee's incapacity (measured as a percentage).⁴⁸ The worker is also owed interest which runs from the date that the claim is filed until they are ultimately paid; the rate is determined by regulation.⁴⁹

In 2015, the maximum indemnity for 100% impairment for an 18 year old worker is \$103, 796 and the maximum indemnity for 100% impairment for a worker 65 years of age or older is \$51, 901.⁵⁰ It is possible that the incapacity is greater than 100% and benefits will be adjusted accordingly⁵¹.

c. Benefits related to rehabilitation

The process of compensation for employment injuries includes the physical, social and vocational rehabilitation of a worker who has suffered an injury.⁵² To ensure the worker's right to rehabilitation, the CSST shall prepare a personal rehabilitation program which may include a physical, social and professional rehabilitation program, depending on the worker's needs.⁵³

Where a worker who has suffered an employment injury has returned to work and must also take part in a personal rehabilitation program, the employer must pay the employee's net salary or wages for each day or part of a day when he or she must be absent from work for this purpose.⁵⁴ If the worker is not back at work, the salary replacement benefits continue during rehabilitation.

ca. Child care

The reimbursement of child care falls under the category of *social rehabilitation*. The purpose of social rehabilitation is to help the worker overcome the personal and social consequences of the employment injury, to adapt to the new situation and become self-sufficient in carrying on usual activities.⁵⁵ A worker is entitled to reimbursement for child care if the worker receives personal home assistance, carries on an activity as part of his or her personal rehabilitation program or is lodged or hospitalized in an institution as a result of the employment injury, AND the worker assumes alone the custody of their children OR, the worker's spouse is unable, owing to illness or disability, to care for the children OR, the worker's spouse is absent from the residence when

⁴⁷ AIAOD, s. 83

⁴⁸ AIAOD, s 84, Schedule II

⁴⁹ AIAOD, s. 90

⁵⁰ http://www.csst.qc.ca/en/workers/Pages/compensation_reimbursement_expenses.aspx

⁵¹ AIAOD, s. 87.

⁵² AIAOD, s.1

⁵³ AIAOD, s. 146

⁵⁴ AIAOD, s. 61

⁵⁵ AIAOD, s. 151, 152

the worker is lodged or hospitalized or is required to accompany the worker to an activity as part of his personal rehabilitation program.⁵⁶ The reimbursement amounts can be found in Schedule V of the AIOAD.⁵⁷

cb. Home care

As part of a physical rehabilitation program, home care may need to be provided. The purpose of physical rehabilitation is to remove or lessen a worker's physical handicap and to enable the worker to develop residual capacity in order to compensate for the functional disability resulting from the worker's employment injury.⁵⁸ The physical rehabilitation program may include home care provided by a nurse, a nursing assistant or nurse's aide. The CSST assumes the cost of the home care and also reimburses the travel and living expenses incurred by the nurse, nursing assistant or nurse's aide (according to the standards and in the amounts it determines).⁵⁹

In some cases, personal home assistance may be granted to a worker if the assistance is required to enable the worker return or remain at home.⁶⁰ The home assistance may include the cost of hiring a person to help the worker care for his or herself or to complete household tasks. This person may be the worker's spouse.⁶¹ The amount payable for home assistance is regulated by the Commission.⁶²

cc. Adaptation of vehicle or home

A social rehabilitation program may include the implementation of means to provide the worker with a residence and a vehicle adapted to his or her residual capacity.⁶³ For a worker's residence to be adapted, the worker must fall under the following 3 criteria: the worker has sustained severe permanent physical impairment, the adaptation is necessary and constitutes the appropriate solution to enable the worker to be autonomous, as described in the law, and the worker undertakes to live in the residence for at least three years.⁶⁴ If the residence is not adaptable to accommodate the worker's residual capacity, the CSST will reimburse the cost of moving into a new residence that is adapted or adaptable up to a specified maximum that is indexed yearly.⁶⁵

⁵⁶ AIAOD, s. 164, 162

⁵⁷ AIAOD, Schedule V

⁵⁸ AIAOD, s. 148

⁵⁹ AIAOD, s. 150

⁶⁰ AIAOD, s. 158

⁶¹ AIAOD, s. 159

⁶² AIAOD, s. 160

⁶³ AIAOD, s. 152

⁶⁴ AIAOD, s. 153

⁶⁵ AIAOD, s. 154

In addition, the principal vehicle of a worker may be adapted if the worker has sustained severe permanent physical impairment and if the adaptation is necessary, owing to the worker's employment injury, to enable the worker to drive the vehicle or to get to it.⁶⁶

d. Healthcare

"A worker who has suffered an employment injury is entitled to the medical aid required by his condition as a result of the injury."⁶⁷ Medical aid consists of:

1. The services of health professionals;
2. The care or treatment provided by an institution governed by the Act respecting health services and social services or by the Act respecting health services and social services for Cree Native persons;
3. Medicines and other pharmaceutical products;
4. Prostheses and orthoses, organ and tissue conservation and the disposal of human bodies;
5. Any care, treatment, technical aid or cost not referred to in the preceding paragraphs determined by regulation by the Commission.⁶⁸

4.0 Additional rights of the worker

a. Right to return to work

The right to return to work applies to those workers bound by an employment contract for an indeterminate term or those workers bound by an employment contract for a fixed term where, following an employment injury, the worker is capable of returning to work before the fixed contract expires.⁶⁹ The worker who is absent from work as a result of an employment injury continues to accumulate seniority and continues to come under the retirement and insurance plans offered in the establishment, provided he or she pays the employee's share of premiums.⁷⁰

The worker who has suffered an employment injury and again becomes able to carry on the pre-injury employment is entitled to be reinstated by preference to others in the same position in the establishment where he or she was working when the employment injury was incurred; or the worker may be reassigned to equivalent employment in that establishment or in another establishment of the employer.⁷¹ However, if regardless of the employment injury the worker would have been transferred, suspended or dismissed or would have lost the employment, and

⁶⁶ AIAOD, s.155

⁶⁷ AIAOD, s.188

⁶⁸ AIAOD, s. 189. See also *Regulation respecting medical aid*, <http://www.canlii.org/en/qc/laws/regu/cqlr-c-a-3.001-r-1/latest/cqlr-c-a-3.001-r-1.html>

⁶⁹ AIAOD, s. 234, 237

⁷⁰ AIAOD, s. 235

⁷¹ AIAOD, s. 236

the employer is bound by a collective agreement, the relevant provisions of the collective agreement would apply as if the worker had been at work.⁷²

If a worker remains unable to carry out pre-injury employment as a result of an employment injury but is able to pursue alternative suitable employment, the worker is entitled to hold the first suitable employment that becomes available in an establishment of the employer.⁷³

However, the employer is not obliged to create a job for the worker if none is available unless the collective agreement provides otherwise. Workers reinstated in pre-injury employment or equivalent employment are entitled to the wages or salary and benefits, at the same rates and at the same conditions, as if they had continued to pursue their employment. Workers who hold suitable employment are entitled to the salary or wages and benefits connected with that employment, taking into account their seniority and uninterrupted service.⁷⁴ Workers may also be entitled to residual salary replacement benefits.

No person may refuse to hire a worker because the worker has suffered an employment injury if the worker is able to carry on the employment contemplated.⁷⁵

The right to return to work and all other rights mentioned in this section may be exercised within one year following the beginning of the period of continuous absence of the worker as a result of an employment injury if the establishment numbered twenty workers or less at the beginning of the period or within two years if the establishment numbered more than twenty workers at the beginning of the period.⁷⁶

c. Protection from sanctions by the employer

No employer may dismiss, suspend or transfer a worker or practice discrimination or take reprisals against the worker, or impose sanctions upon a worker because he or she has suffered an employment injury or has exercised rights under this Act.⁷⁷ Workers who believe they have been the object of a reprisal may file a complaint to the CSST, in writing, within thirty days of knowledge of the action, sanction or measure about which they complain. The worker must also transmit a copy of the complaint to the employer.⁷⁸ If the worker is unionized, a grievance may be filed instead but the worker can't exercise both recourses.⁷⁹

⁷² AIAOD, s. 238

⁷³ AIAOD, s. 239

⁷⁴ AIAOD, s. 242

⁷⁵ AIAOD, s. 243

⁷⁶ AIAOD, s.240

⁷⁷ AIAOD, s. 32

⁷⁸ AIAOD, s. 32, 253

⁷⁹ AIAOD, s. 32

5.0 Civil liability

a. Can a worker sue their employer?

The AIAOD creates a no-fault system of compensation.⁸⁰ This means that when the AIOAD applies, civil liability remedies cannot be instituted before general jurisdiction courts.⁸¹ When an injury is covered by the AIOAD (is deemed an employment injury), the worker may not institute a civil liability action against his or her employer by reason of the employment injury.⁸²

The other implication of a no-fault system of compensation is that employees are entitled to compensation even when the employment injury was not caused by the fault of their employer. In other words, the employer's fault has no incidence on the compensation owed to the worker.⁸³ The worker's fault is also irrelevant, unless the "injury or disease arose solely as a result of the gross and wilful negligence of the worker who is the victim thereof...unless [the employment injury] ends in his death or causes him severe permanent physical or mental impairment»⁸⁴.

b. Can a worker sue a fellow employee?

The worker may never sue a co-worker or mandatary of an employer for fault committed in the performance of their duties unless it arises from the care received by a worker for an employment injury or the lack of such care, or an activity prescribed to the worker as part of the medical treatment received for an employment injury or as part of the personal rehabilitation program, and where the person responsible is a health professional.⁸⁵

Note: It was determined by the Supreme Court of Canada that even damages sought in remedy for the violation of a right guaranteed by the Quebec Charter⁸⁶ cannot be claimed through civil proceedings against the worker's employer or fellow employees where the factual basis of the case could meet the definition of an employment injury (such as an interference with the right to dignity resulting from sexual harassment at the workplace) because "The violation of a right protected by the Charter is equivalent to a civil fault."⁸⁷ This principle applies whether or not the worker claimed benefits from the CSST under the AIAOD⁸⁸.

c. Can a worker sue another employer?

The worker may never sue his or her own employer for damages resulting from a work injury. However, in some cases a worker may be able to sue another employer, but only if one of the following exceptions applies: if the employer has committed a fault that constitutes an offence

⁸⁰ AIAOD, s.25

⁸¹ AIAOD, s. 438-439

⁸² AIAOD, s.438

⁸³ AIAOD, s. 25

⁸⁴ AIAOD, s. 27

⁸⁵ AIAOD, s. 31, 442

⁸⁶ Quebec Charter of Human Rights and Freedoms, CQLR (1976)

⁸⁷ Béliveau St-Jacques v. Fédération des employées et employés de services publics inc., [1996] 2 SCR 345

⁸⁸ Genest C. Commission des droits de la personne et de la jeunesse (2001), J.E, 213 (C.A.)

within the meaning of the Criminal Code; to recover the amount by which the loss sustained exceeds the benefit; if the employer is a person responsible for an employment injury arising from the care received by a worker for an employment injury or the lack of such care or an activity prescribed to the worker as part of the medical treatment received for an employment injury or as part of the personal rehabilitation program; or if the employer is personally liable for the payment of benefits.⁸⁹

In those cases where a lawsuit is possible because the third party employer has committed a fault that constitutes an offence or indictable offence within the meaning of the Criminal Code, the suit must be instituted within six months of the admission of guilt or the final conviction.⁹⁰

6.0 Procedure

According to the CSST, there are four important steps to follow if you have a work-related accident⁹¹:

1. **Notify your employer immediately.** Your employer or your employer's representative must be notified immediately, even if you do not require immediate medical attention. If you are unable to do so, someone may be appointed to notify your employer on your behalf.
2. **Seek the necessary medical care.** Even if the injury seems minor, a physician should be seen as soon as possible. The physician should give you a "Medical Certificate", as this will be needed to file a claim with the CSST. If you are unable to return to work the day after your accident, a copy of the certificate should be given to your employer.
3. **Keep all your receipts.** Most of the benefits from the health services necessitated by a condition you have sustained as a result of a work-related accident will be free of charge and the CSST will pay the hospital or clinic directly for these services. However, you may have to pay for some products yourself, such as medication, physiotherapy, orthotics, prostheses, travel and accommodation expenses, etc. These types of expenses may be reimbursed by the CSST by submitting the **originals** of the receipts along with any supporting documents.
4. **File a claim with the CSST, if applicable.** A claim should be filed with the CSST to request reimbursement for services or products mentioned in the point above, regardless of whether you are absent from work or not. A claim should also be filed for **income replacement indemnities** if you are absent from work for more than 14 days. Your employer pays your income replacement for the first 14 days.

⁸⁹ AIAOD, s. 31, 441

⁹⁰ AIAOD, s. 441

⁹¹ Information for workers: If you have a work-related accident or contract an occupational disease...CSST.
http://www.csst.qc.ca/en/publications/Documents/DC_100_1503_7A_web.pdf.

a. Claim forms

Claim forms to be submitted to the CSST can be found on their website (www.csst.qc.ca/en/Pages/forms.aspx).

If you are not able to return to work the day after your work accident, your employer will have to fill out the Employer's *Notice and Reimbursement Claim form*, on which your version of the accident is recorded. The employer **must** give you a copy before sending it to the CSST.⁹²

If you must be absent from work for more than 14 days, you must fill out the *Worker's Claim form*. This form, as well as being available on the website, can be obtained from your employer or in one of the CSST's offices.⁹³

For reimbursement of expenses, the *Application for Reimbursement of Expenses* form is used.⁹⁴

b. Reassignment

In order to promote your return to work while medical treatment is continuing, an employer may reassign you to a different position temporarily. This reassignment must be determined with your attending physician's consent. Although the tasks may be different, you will retain your regular salary or wages and your employment benefits for the duration of the temporary reassignment.⁹⁵

Note: The form for temporary reassignment can be found at http://www.csst.qc.ca/en/formulaires/Pages/2001a_.aspx.

c. How to make claims through the CSST

As mentioned in this section, you should file a claim with the CSST to request reimbursement for expenses (regardless of whether you are absent from work or not) and/or for income replacement indemnities if you are absent from work for more than 14 days. The procedure to follow⁹⁶ is the following:

1. Fill out the *Worker Claim form* and/or the *Application for Reimbursement of Expenses form*.
2. Enclose the *Medical Certificate* along with the originals of your receipts and any supporting documents.
3. Send everything to the CSST office in your region.
4. Give your employer a copy of your *Worker's Claim form* (a copy of the *Medical Certificate* should have already been submitted to your employer).

Note: detailed instructions on how to fill out the *Worker's Claim form* can be found at: <http://www.csst.qc.ca/en/formulaires/Documents/1939Aweb.pdf>.

⁹² Information for workers.

⁹³ Information for workers.

⁹⁴ Information for workers.

⁹⁵ AIAOD, s. 236.

⁹⁶ Information for workers.

d. Delays and deadlines

The deadline to file a claim with the CSST is six months from the date of the employment injury regardless of whether or not the worker is unable to keep working from the date of the injury.⁹⁷

A worker who has contracted an occupational disease has six months to file a claim with the CSST from the date the worker is made aware that he or she has an occupational disease.⁹⁸

7.0 Doctors

a. Role of treating physician

You have the right to choose your own physician and the healthcare establishment where you will receive medical care.⁹⁹

Your physician plays an important role. The physician is the one who issues the diagnosis, recommends appropriate treatments and determines when your injury is stable. The physician informs you of your condition and your fitness to return to work. Additionally, the physician determines whether or not your capacities are the same as before the accident or whether you have sustained a permanent physical or mental impairment. Your physician may also request the opinion of another healthcare professional if they consider it necessary.¹⁰⁰

Your physician's opinion carries weight with the CSST as it is binding with regard to the following matters¹⁰¹:

1. The diagnosis;
2. The foreseeable date or time of consolidating the injury;
3. The nature, necessity, adequacy or duration of the administered or prescribed care or treatment;
4. The fact or degree of permanent physical or mental impairment of the worker;
5. The fact or the assessment of the worker's functional disability.

b. Medical exams requested by the employer or the CSST

Your employer or the CSST may ask you to see a physician of their choice. If this is the case, they are obliged to pay all fees for the examination as well as for any travelling involved.

Although you are obliged to go to the appointment scheduled, you have the right to continue being treated by the physician of your choice.¹⁰² If this physician disagrees with your doctor's opinion, a third doctor from the *Bureau d'évaluation médicale* will examine you and decide which opinion is correct. The CSST must follow this opinion but appeals are possible.

⁹⁷ AIAOD, s. 270-271. The same deadlines apply to the beneficiary if the worker died as a result of the injury.

⁹⁸ AIAOD, s. 272. The same deadlines apply to the beneficiary if the worker died as a result of the occupational disease.

⁹⁹ AIAOD, s. 192.

¹⁰⁰ Information for workers.

¹⁰¹ AIAOD, s. 212, 224.

¹⁰² Information for workers.

8.0 Review and Appeal of CSST decisions

a. Decisions of the CSST

The CSST functions as a first instance administrative decision maker.¹⁰³ The CSST renders decisions on the basis of the admissibility of compensation claims and if the claim is accepted, it determines the value of the indemnity to be awarded.¹⁰⁴ Deciding the admissibility of a claim includes determining if an employment injury occurred.¹⁰⁵

b. Review of a CSST decision to the administrative review board

Once the CSST has rendered a written decision, it must notify the parties as soon as possible.¹⁰⁶ If the worker or employer is dissatisfied with the decision of the CSST, they may request that the decision be reviewed by the administrative review board of the CSST (Direction de Révision Administrative/ DRA). The review application must be made by the worker or employer within 30 days of being notified of the decision;¹⁰⁷ it should be transmitted to the CSST office in the district of the worker's residence.¹⁰⁸ This application must be in writing and state the reasons for which review is requested.¹⁰⁹ Note that many different decisions can be rendered in the same file, and each one must be contested within the deadline if the worker or the employer is dissatisfied with the specific decision. In exceptional circumstances, the CSST can revise its own decisions, and it has a 90 day delay to do so.¹¹⁰ This exceptional revision process applies where the CSST rectifies an error or must consider new information or evidence.¹¹¹

The application for **review** can be completed online by filling in a form through the CSST website at the following link:

https://www.servicesenligne.csst.qc.ca/employeurs/demande_revision/etape0.aspx?client=TRAV&_ga=1.237063360.1701471523.1411743860

Alternatively, a **review** application can be made by mailing the following form to the appropriate CSST office:

<http://www.csst.qc.ca/en/formulaires/Documents/5014aweb.pdf>

¹⁰³ AIAOD, S.349

¹⁰⁴ AIAOD, S.349

¹⁰⁵ AIAOD, S.349

¹⁰⁶ AIAOD, S. 354

¹⁰⁷ AIAOD, S. 358

¹⁰⁸ CSST: General Information. Can a CSST decision be contested?

http://www.csst.qc.ca/en/Pages/352_faq_en_faq_general.aspx#g

¹⁰⁹ AIAOD, S. 358.1

¹¹⁰ AIAOD, S. 365

¹¹¹ AIAOD, S. 365

After the CSST has received the application and given the parties the opportunity to present their arguments and observations in writing or by telephone, the CSST will carry out the review: either maintaining or altering the initial decision.¹¹² There is no hearing before the review decision is made.

c. Appeal of an administrative review decision to the CLP

Upon rendering its review level decision, the CSST transmits a notice to both parties stating the reasons on which decision is based.¹¹³ Either party has a time limit of 45 days, from reception of the decision, to contest it before the *Commission des Lésions Professionnelles* (CLP).¹¹⁴

This appeal **application** can be made by transmitting the following form to the CLP office operating in the district of the worker's residence:

http://www.clp.gouv.qc.ca/fileadmin/documents_pdf/Formulaire_de_contestation_-_Janvier_2011.final.pdf

The rules governing the appeal to the CLP are determined both by the law¹¹⁵ and by rules of practice.¹¹⁶ There may be a conciliation procedure prior to the hearing at the CLP. At the time of the hearing at the CLP, witnesses will be heard and medical evidence may be presented by the parties. It is wise to seek legal representation for that hearing, or to otherwise ensure that you are prepared, as this is the hearing that will normally determine the issue definitively.

The decisions of the CLP are final and cannot be appealed. However, in very exceptional circumstances¹¹⁷ parties may apply to the CLP for the review or revocation of its decision. This must be done within “a reasonable time”¹¹⁸ after the original CLP decision or “after a new fact likely to warrant a different decision is discovered.”

It should be noted that if the worker's claim was contested by the employer, and compensation is ultimately awarded by the CLP upon the appeal, the worker is entitled to interest on the indemnity, fixed at the legal rate.¹¹⁹ The interest due is not restricted to the amount related to the delay in payment, but extends to the entire sum.¹²⁰

If the worker was initially awarded compensation by the CSST and receives compensation for wage replacement, in full or in part, that sum cannot be recovered by the CSST, even where the CLP reverses the decision of the CSST.¹²¹ This also applies to other types of benefits received, but not to all benefits. The wage replacement benefits paid by the employer for the first 14 days,

¹¹²AIAOD, S. 358.3, 358.4

¹¹³AIAOD, S. 358.5

¹¹⁴AIAOD, S. 359

¹¹⁵AIAOD, S. 367 – 429.57

¹¹⁶Regulation respecting evidence and procedure of the Commission des lésions professionnelles, CQLR c A-3.001, r12 ; <https://www.canlii.org/en/qc/laws/regu/cqlr-c-a-3.001-r-12/latest/cqlr-c-a-3.001-r-12.html>

¹¹⁷AIAOD, S. 429.56

¹¹⁸AIAOD, S. 429.57

¹¹⁹AIAOD, S. 364

¹²⁰AIAOD, S. 364, *Paré et Blanchette c. Blanchette inc.*, (2010), QCCLP 6172

¹²¹AIAOD, S. 363

immediately following the work injury will be recovered from the worker. Similarly the CSST can recover benefits paid to the worker who acted in bad faith.¹²²

¹²² AIAOD, S. 60, 363