

Conseil fédéral– November 28, 2018 – Quebec City

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Amendments to the *Labour Standards Act* and the *Charter of Human Rights and Freedoms* –  
Selected Articles

Impacts on the FPPC – CPNC Collective Agreement

**Document prepared by:**

Frédéric Lussier-Cardinal  
Union Advisor – FPPC (CSQ)  
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## **Reminder: the *Charter of Human Rights and Freedoms* and the *Labour Standards Act*: laws of public order.**

The *Charter of Human Rights and Freedoms* (the “*Quebec Charter*”) is a quasi-constitutional law. It is an essential text in the legal relationship between people in Quebec, especially in establishing the right to equality in the recognition and exercise of fundamental rights and freedoms, political rights and judicial rights. This law also provides for sanctions and remedies in the event of a contravention of these rights and freedoms.

The *Quebec Charter*, a law of public order, is subordinate to the collective agreement in the interpretive hierarchy of sources of rights and freedoms. This means that the FPPC and CPNC cannot contravene it in the negotiation and application of the collective agreement. Should this occur, the *Quebec Charter* would define such a provision as “void and without effect.”<sup>1</sup>

In our unionized context, the appropriate recourse for securing the rights and freedoms guaranteed by this law is a grievance.

The *Quebec Charter* lists the grounds for discrimination, as does the FPPC collective agreement. The grounds listed were modified in 2016 by certain provisions of the *Act to strengthen the fight against transphobia and to improve the situation of transgender minors in particular*. Legislators added new grounds for discrimination: **gender identity or expression**.

The *Labour Standards Act* (the “*LSA*”) is also a law of public order. It stipulates minimum employment standards for employees and certain managers. For the FPPC and the CPNC, the scope of the law is the same as the *Quebec Charter*, in that provisions of the collective agreement cannot contravene it<sup>2</sup>. Any provision of the collective agreement that is less advantageous than the law must be replaced to comply with it.

Last June a major bill amending several provisions of the Act came into force. These were provisions dealing with **holidays, leaves of absence, vacation** and certain provisions related to psychological and sexual harassment. With the help of the CSQ’s Legal Department, we have prepared an informative summary table of some of these subjectively selected changes and the concordant articles of the FPPC-CPNC 2015-2020 collective agreement. **The modifications reproduced are not exhaustive**. You can contact the FPPC Union Advisor for more complete information.

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<sup>1</sup> Article 13: No one may in a juridical act stipulate a clause involving discrimination. Such a clause is without effect.

<sup>2</sup> Article 93. Subject to any exception allowed by this Act, the labour standards contained in this Act and the regulations are of public order. In an agreement or decree, any provision that contravenes a labour standard or that is inferior thereto is absolutely null.

## Quebec Charter

### What the collective agreement says:

The College and the Union are prohibited from acting in a discriminatory manner for the reasons set out in the Quebec Charter in force prior to 2016 modifications and other reasons, in particular (extract of Article 2-3.01):

“on the basis of his/her beliefs, state of parenthood, family ties, political or union convictions, language, or because he/she has exercised a right or fulfilled an obligation granted or imposed on him/her by the collective agreement or by the law.” (Selected omissions)

### Amendment of the Quebec Charter:

The addition of the following grounds: gender identity or expression.

Article 10 of the Charter now lists the following grounds of discrimination:

“Race, color, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by the law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.”

## Labour Standards Act

### *Statutory Holidays for the Part-time Professional:*

#### What the collective agreement says:

“The part-time professional employed by the College for only part of the fiscal year shall be entitled to the statutory holidays or fractions thereof that coincide with their normal schedule.” (extract from Article 8-3.01)

#### Amendments to the Labour Standards Act

The LSA now allows part-time professionals to be compensated for a holiday that doesn't coincide with their regular schedules. Some nuances may apply, one of which depends on the hiring period of the part-time employee.

If this situation arises, contact the FPPC Union Advisor.

## *Psychological Harassment*

### **What the collective agreements says:**

Both parties acknowledge that violence and psychological harassment are reprehensible acts and both shall make an effort to discourage their practice in the workplace. The College is obliged to set up a committee and develop a policy containing mechanisms for prevention and processing complaints. (Article 2-5.00)

The collective agreement also stipulates that a grievance must be filed within 90 days of the last occurrence of such behavior, otherwise the recourse is prescribed. (Article 9-1.04)

**Reminder:** The filing of an internal complaint under the College's policy does not interrupt the time constraints for filing a grievance. A grievance AND an internal complaint may be filed at the same time.

### **Amendments of the Labour Standards Act**

The LSA is amended as follows:

- The addition of a sentence to the definition of psychological harassment to include sexual harassment;
- The College's psychological harassment policy must include a section on sexual harassment (effective January 1, 2019);
- The deadline for filing a psychological harassment grievance, including sexual harassment, increases from 90 days to 2 years following the last occurrence of harassment.

## *Annual Vacation*

### **What the collective agreement says:**

Any full-time professional who has completed between one (1) to seventeen (17) years of service is entitled to twenty (20) working days of annual vacation, which is equivalent to four (4) weeks. Additional days will be granted to professionals with more than seventeen years of service. (Article 8-4.01)

The collective agreement also stipulates that professionals who have accumulated more than sixty (60) days of absence without pay shall see a reduction in their annual vacation days (Article 8-4.04) in accordance with the scale that appears in Article 8-4.06. The longer the absence, the more significant the reduction in the number of vacation days. Aside from certain exclusions (8-6.06 or 8-6.07 and leaves stipulated in clauses 8-6.09, 8-6.18, 8-6.19, 8-6.21, 8-6.22, 8-6.30, 8-6.31 and 8-6.32), these "absences" concern the person on leave without pay and the person on disability receiving salary insurance benefits.

We are of the opinion that clauses 8-4.02 and 8-4.04 may, under the *Quebec Charter*, discriminate against a professional who is absent due to illness. In addition, for some application cases, the reduction in annual vacation may be less than what the LSA provides.

#### **Amendments of the Labour Standards Act**

Since June 2018, an employee has been entitled to three (3) weeks of vacation after three (3) years of continuous service with the same employer instead of five (5) years.

Reminder: we want unions pay attention to the way this applies to certain situations. Typical case: a professional with more than three (3) years of continuous service is absent for disability for more than sixty (60) days and finds, once they return to work, that their annual vacation has been reduced to less than fifteen (15) working days based on the application of Articles 8-4.04 and 8-4.06.

#### ***Other Leaves of Absence***

##### **What the collective agreement says:**

- Family Absences (extract from Article 8-5.05)

“A professional may take time away from work, without pay, for 10 days per year to fulfill obligations relating to the care, health or education of the professional’s child or the child of the professional’s spouse, or because of the state of health of the professional’s spouse, father, mother, brother, sister or one of the professional’s grandparents.

The professional must advise the College of his/her absence as soon as possible

The days used as such are taken from the professional’s annual bank of sick days without cash surrender value. Failing that, they are taken from the professional’s annual bank of sick days with cash surrender value, or, failing that, they are without pay. During said absence, the professional shall accumulate seniority and experience.” (...)

- Family leave (extract from Article 8-5.06)

“A professional may take a leave without pay of not more than twelve (12) weeks over a period of twelve (12) months when he/she must stay with his/her child, spouse, the child of his/her spouse, his/her father, his/her mother, the spouse of his/her father or mother, his/her brother, his/her sister or one of his/her grandparents because of a serious illness or a serious accident.”

**Amendments of the Labour Standards Act:**

- Absence of ten (10) days per year to fulfill obligations related to the care, health or education of a parent or if one acts as a caregiver to a person. The first two (2) days are paid if the person has completed three (3) months of continuous service with the employer. A professional governed by the Professional Code will have to certify the status of a caregiver. (effective January 1, 2019)
- Absence permitted for a period of sixteen (16) weeks within a period of twelve (12) months to take care of a person listed in Article 8-5.06 of the collective agreement due to a serious illness, a serious accident or to act as a caregiver.

**Note:**

Several other amendments affect the length of family-related leaves without pay provided for in the collective agreement (generally from fifty-two (52) to one hundred and four (104) weeks), including time off for the death of a child, a death by suicide, disappearance, etc. You can contact the FPPC Union Advisor for more information related to these legislative changes.