

COCO INFO-SHEET



COCO – The Centre for Community Organizations
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Employer & Employee Rights & Responsibilities

At COCo, we often receive requests for information about the rights and responsibilities of both employers and employees. Like all other employers in Quebec, community organizations must respect the legal rights of employees and meet certain obligations. By knowing the basic duties and rights outlined by law, organizations and their employees can avoid conflicts, rest assured that they are in good legal standing, and more generally, promote a healthy organization and work atmosphere.

This info-sheet gathers various employment-related topics that have come up in our information consultations with community organizations. It will overview the definitions of "employer" and "employee", minimum labour standards, complaints procedures, unions, the CSST (Quebec's public insurance plan for work-related injuries), obligatory source deductions and contributions by employers, and the differences between the Human Rights Commission and the Labour Relations Commission. Additional resources are also listed below. For more information about any of these subjects, or on a topic not covered in this info-sheet, please consult with us at COCo.

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1. EMPLOYERS AND EMPLOYEES

What is an employer?

The non profit organization (NPO) is itself the employer. The Board of Directors (“Board”), usually elected by the General Assembly of members at an annual meeting, is responsible for overseeing the work of the organization and its employees. Though the Board may delegate personnel decisions to a hired or volunteer management team, the members of the Board are always responsible for general oversight of the organization, and may, in certain circumstances, find themselves legally responsible for decisions made during their mandate. For more detailed information, please refer to:

COCO Info-Sheet

“Board Liability and Non-Profit Organizations”

<http://coco-net.org/en/node/1044>

Who is an employee?

Most employees are guaranteed certain basic legal rights in the workplace under the Quebec *Act Respecting Labour Standards*. But not every worker is considered an “employee” by law. An employee, as opposed to a self-employed worker, is someone who receives a salary under an employment contract and whose work is under the control or supervision of the employer. Generally, someone who works for salary, according to the schedule chosen by the employer, in a place determined by the employer, and with tools that the employer has provided will be considered an employee.

For example, consider a non-profit organization that hires a community nurse to do street outreach two evenings a week and to operate an in-house clinic two days a week. Her supplies are paid for by the organization, her hours are fixed according to a schedule, she is on the payroll and she is expected to follow organization policies. She would be considered an employee and would be entitled to certain basic labour standards.

The same organization hires a caterer for annual general assemblies and for events throughout the year. That caterer, or any of his employees, is only required to work from time-to-time,

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uses his own equipment, is not provided a workspace or specific work hours and submits invoices for his services. He would be considered an independent contractor and therefore is only protected by his service contract.

The organization's obligations when it is acting as an "employer" to its "employees" are thus very different than when it is dealing with independent contractors. Specifically, as we will see, an employer has the legal obligation to respect certain labour standards, pay into the CSST (*Commission de la santé et de la sécurité du travail*), deduct from wages or salaries and pay their employer contributions to *Revenu Québec* and to the Revenue Canada Agency.

For more information on the distinctions between a self-employed worker and an employee, please see:

Revenu Québec Pamphlet

"Employee or Self-Employed Person?" (IN-301-V)

<http://www.revenuquebec.ca/en/sepf/publications/in/in-301.aspx>

2. LABOUR STANDARDS AND THE *COMMISSION DES NORMES DU TRAVAIL*

The responsibility of the *Commission des normes du travail* (CNT) is to promote "fair and balanced labour relations between employers and employees" and to monitor the application of the laws and regulations relating to labour standards in Quebec. The CNT informs employers and employees about their rights, provides mediation services and assists employees who want to file a complaint or take their employer to the tribunal dealing with labour relations – the *Commission des relations du travail* (CRT) – or to court. Dispute resolution services are crucial when relations break down between employer and employee. However, the real strength of having a mandatory system of workplace standards is that conflicts can be avoided when everyone knows in advance what the rules are and especially when those rules are as fair as possible to both workers and employers. Ideally, these rules encourage employers and employees to talk frankly about work conditions before serious problems arise that require more formal solutions.

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The *Act Respecting Labour Standards* (“the Act”) applies to every non-profit organization with at least one employee and covers a variety of employment-related topics. These include how and when an employee may be fired, minimum wages, bereavement leaves and other family-related leaves, overtime pay, the protection of employees who exercise their rights, annual vacations, meals, breaks and weekly rests, public holidays and psychological harassment. Of course, specific obligations will vary according to individual work contracts or organizational policies. Still, it is important to remember that the Act *guarantees* employees minimum rights. Any verbal or written agreements about work conditions that provide less than what is contained in the Act are invalid.

The Act will apply to almost all employees, although a few exceptions exist and are listed on the Labour Standards commission website at:

Labour Standards Commission Exceptions

“Workers not covered by the Act respecting labour standards”

<http://www.cnt.gouv.qc.ca/en/home/top-4-non-couverts/worker-not-covered-by-the-act-respecting-labour-standards/index.html>

Employee obligations

Non-profit organization employees have certain obligations to the organizations that employ them. Here are two of the basics:

- They must do the work that they were hired to do according to their work schedule, although there are regulations regarding overtime hours. Employees can only refuse to do something if it is illegal, would violate their professional code of ethics or would be dangerous to their health or safety.
- Furthermore, they must be loyal: they are required to avoid situations of conflict of interest with their employers and avoid using confidential information for personal profit.

Employer obligations

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Under the Act, employers at non-profit organizations have a number of legal responsibilities towards their employees. For example, they must provide work that corresponds to their employees' contracts. They must pay employees regularly and they must pay them overtime for any hours put in over the standard legal workweek. They must make sure that their employees' health is not put at risk through unsafe or unsanitary work conditions. They must give reasonable notice when terminating a contract that has no fixed end date, or else pay compensation to replace the "notice" period. They must give employees who do the same work in the same establishment similar employment conditions. They must also treat employees with respect, protect their dignity and cultivate a workplace that is free of discriminatory behaviour and sexual harassment.

A complete list and detailed explanations of all labour standards can be found at the *Commission des normes du travail* website:

Commission des normes du travail website

<http://www.cnt.gouv.qc.ca/en/>

Filing a complaint

The following are four main reasons for which an employee might bring a complaint to the *Commission des normes du travail*:

- they were fired, demoted or punished because they exercised a right (for employees who have been working for a period of over three months);
- they were fired without good and sufficient cause (for employees who have been working for over two years, continuously);
- there is a dispute over money; or,
- they were psychologically harassed at work.

Before taking action on behalf of an employee, the CNT will first determine whether that employee qualifies for protection under the Act and then will determine the validity of the complaint. Different procedures will apply depending on what the complaint is about. Here

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are a few examples:

Overtime pay

Mustafa was hired by a shelter for street-involved youth to work four eight-hour shifts a week. One week his coordinator Julie was at her wit's end: several workers were home sick with the flu! She asked Mustafa to put in two extra shifts. Being pretty new to the organization, he browsed the employment policy to see what it said about overtime pay, but he couldn't find anything written down.

Mustafa went onto the *Commission des normes du travail* website and found out that the law requires employers to pay time-and-a-half when employees work over forty hours in one week. Mustafa calculated that by taking on two extra shifts, he'd be working forty-six hours in one week, six hours above the standard workweek. He was happy to learn he would be paid time-and-a-half for those six hours. But when payday came, Mustafa found he was only paid his regular wage rate for the extra hours.

Mustafa tried to talk to Julie and even used the model letter he found on the website to inform Julie and the Board of Directors about the situation, but got no reply.

Where should he go for help?

Mustafa can contact the CNT to make a complaint. The CNT will first check whether Mustafa and his employer are covered by the Act, that the overtime standard applies to Mustafa and that he filed his complaint within one year of the incident. Then the CNT will assign an inspector-investigator to look into the validity of Mustafa's complaint by hearing the employer's side of the story and reviewing the evidence. If the complaint is considered valid, and the organization doesn't settle the matter with Mustafa directly, the inspector-investigator will send the organization a notice that it has to pay Mustafa his overtime wages. Most conflicts are resolved by this point. However, if the organization still refuses to comply with its legal obligations, the CNT will pursue the organization on Mustafa's behalf before the CRT.

Dismissed without good and sufficient cause

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Lola had been managing a drop-in centre at an advocacy and support organization for single mothers, “Mom’s the Word,” for over three years. Although she rarely ever missed a shift, one morning Lola failed to show up for work because her son sprained his ankle on his way to school and needed to be taken to hospital. When she finally arrived at the office, her employer told her that she was fired because of the incident. Lola is convinced that missing a morning of work is not good enough reason to be dismissed from her job. What can she do?

If Lola files a complaint within 45 days and she falls under the responsibility of the CNT, it will inform the organization that a complaint for wrongful dismissal has been made. If Lola and her employer agree to it, the CNT can choose a mediator who will try to resolve the complaint with the participation of all the parties.

However, if Lola and the organization can’t come to an agreement during mediation, the CNT will send her complaint to the CRT, which will then hear her case. At the hearing, it’s up to the organization to prove that Lola was fired for a good and sufficient cause (for example: insubordination, violation of the code of ethics, incompetence, etc.)

To file a complaint, the employee must call the information services of the *Commission des normes du travail* at:

Commission des normes du travail information services

1-800-265-1414

Employees who want more information about their rights in the workplace can contact *Au bas de l’échelle*, a community organization dedicated to defending workers’ rights and improving work conditions. They also conduct workshops about employees’ rights and have published a fabulous summary of the issue called “An Act Respecting Labour Standards In a Nutshell”. They can be reached at:

Au bas de l’échelle

514-270-7878

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www.aubasdelechelle.ca

Please refer to section 6 of this info-sheet for important details about the Human Rights Commission and the Courts as alternative forums for filing an employment-related complaint.

3. UNIONIZATION

A trade or labour union is a group of workers who use collective bargaining power to achieve common goals in the workplace. A union representative or team of representatives bargains with the employer and negotiates labour contracts or collective agreements on behalf of union members. Such agreements normally include provisions about wages, work rules, complaint procedures, rules governing hiring, firing and promotion of workers, benefits, workplace safety and other related policies. They are binding on union members and employers. Therefore, when there is a conflict in a unionized workplace, the collective bargaining agreement is the first document to check out. If an employer doesn't respect the agreement, a unionized employee can file what is called a grievance, which will be submitted to an arbitrator.

Remember, though, that the *Act Respecting Labour Standards* provides the minimum standards that have to be respected by all employers. So, if a collective agreement doesn't say anything about particular problem, the Act might provide an answer.

4. HEALTH, SAFETY AND THE CSST

Workers have historically paid a bloody price for the dangers of industrial growth. After a long struggle, Quebec now has an accident fund, paid for by employers, to compensate employees when they are injured at work. Not only does the *Commission de la santé et de la sécurité du travail* (CSST) support injured workers through this fund, but it is also in charge of ensuring workplace safety and prevention.

Important dates for employers

Every non-profit organization with at least one part time or full time employee must register with the CSST within the first two weeks of the employee's start date. Forms for registering can

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be found on the CSST website (in French only) at:

CSST Registration Form

<http://www.csst.qc.ca/employeurs/inscriptions/Pages/inscription.aspx>

Non-profit organizations must submit an annual salary report and pay annual dues. Every January, registered organizations receive standard forms for submitting their salary report by the following March. Then, in April or May, the CSST sends back a notice for payment of the annual dues, along with a summary of how these dues were calculated.

If the dues are not paid before the deadline, the organization will have to pay interest on the unpaid amount.

Employee benefits

Employees (or their beneficiaries) generally qualify for income-replacement pursuant to injuries, illness or death resulting from work-related causes. The CSST will sometimes deny benefits if it considers that the employee was being reckless, but an employee will always be compensated for *severe* injuries.

Income replacement is equal to 90% of the worker's net salary. Note that work-related mental health problems are increasingly being covered by the CSST. Employees are also compensated for certain physical injuries resulting from a work-related accident as well as some of the costs associated with medical treatment. The CSST administers this program and will help employees to access benefits. Also, employees who are concerned about a particular health and safety risk in the workplace can ask the CSST to send an inspector to the worksite. The inspector can order that proper safety equipment be installed if needed.

Volunteers

Employers who want their volunteers to be covered by certain CSST protections can make a request in writing to the CSST anytime throughout the year. Volunteers' compensation is calculated according to a minimum wage salary and therefore they will receive 90% of the minimum wage rate for volunteer hours they miss as a result of injuries sustained during a volunteer shift. The CSST provides a guide (in French only) describing the information that

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employers need to include in the request, found at:

CSST Guide for Registering Volunteers

http://www.csst.qc.ca/employeurs/inscriptions/Pages/protection_travailleurs_benevoles.aspx

The CSST will help employers who need assistance with any of their forms.

CSST Help

1-877-733-6763
cotisation@csst.qc.ca

5. SOURCE DEDUCTIONS AND EMPLOYER CONTRIBUTIONS

All non-profit organizations have to make certain payments to the provincial and federal revenue agencies. Non-profit organizations must take *source deductions* from employee salaries, wages or other remuneration, and they must also pay their own *employer contributions* to certain federal and provincial funds. Remember: employers are always responsible for getting employees' correct social insurance numbers.

Revenu Québec is responsible for the collection of income tax and consumption taxes in Quebec.

Registration

All employers must register with *Revenu Québec* to obtain an identification number and remit source deductions and employer contributions and to file a yearly tax return. To obtain an identification number, employers must complete form LM-1-V available at the website below. *Revenu Québec* also provides an electronic service for registering a new business:

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Revenu Québec Form LM-1-V

<http://www.revenuquebec.ca/en/sepf/formulaires/lm/lm-1.aspx>

Revenue Québec also provides a guide for employers and employees concerning their fiscal obligations. The guide contains information regarding the source deductions they are required to withhold from the remuneration they pay and the employer contributions they must make.

Revenu Québec Guide

http://www.revenuquebec.ca/en/sepf/formulaires/tp/tp-1015_g.aspx

Supplementary Guide for employers

http://www.revenuquebec.ca/en/sepf/formulaires/tp/tp-1015_gc.aspx

Provincial source deductions

Non-profit organizations are required to withhold income tax, Québec Pension Plan (QPP) premiums and Quebec parental insurance plan (QPIP) premiums from employee salaries and wages.

Provincial employer contributions

Employment contributions are essential to maintaining certain social safety nets. Employers are required contribute to:

- the QPP, the QPIP and the health services fund (HSF);
- the *Commission des normes du travail* (CNT). Note that institutions and charities that provide assistance free of charge to persons in need are not required to pay into the CNT; and
- the Workforce Skills Development and Recognition Fund for the development of worker training, but only if the total payroll exceeds \$1 million.

Collection of support payments

Also, any organization that has an employee who is subject to the *Act to Facilitate the Payment of Support* must collect support payments by withholding the amounts from that employee's

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pay. *Revenu Québec* notifies organizations whose employers are subject to that law.

A list of guides and forms specifically designed for non-profit organizations is available at:

Revenu Québec Guides & Forms for non-profit organizations

<http://www.revenuquebec.ca/en/entreprise/impot/osbl/default.aspx>

Important dates for *Revenu Québec*

Hiring

When hiring new employees, organisations must have them complete a copy of form TP-1015.3-V, *Source Deductions Return*. The form indicates to employees which tax deductions or tax credits they are entitled to claim for the year. If the form is not completed before the first pay period, then the baseline rate will be applied. The form can be found at:

Revenu Québec Source Deductions Return Form

http://www.revenuquebec.ca/en/sepf/formulaires/tp/tp-1015_3.aspx

Remittances

Depending on the value of the source deductions and contributions, an employer will be required to pay on a monthly, bi-monthly or weekly basis. *Revenu Québec* provides information to help determine how often to remit, at:

Revenu Québec Remittance Schedules

http://www.revenuquebec.ca/en/calendrier/cot_empl/default.aspx

Different payment methods are possible, including remittance by mail, through financial institutions, as well as several on-line options. Information about payment can be found at:

Revenu Québec Payment Methods

http://www.revenuquebec.ca/en/entreprise/retenues/paiement/mode_paieme

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[nt.aspx](#)

Filing

On or before the last day of February of each year, a non-profit organization must file form RLZ-1.S-V, *Summary of Source Deductions and Employer Contributions*, for the preceding year, in order to account for amounts remitted to *Revenu Québec* for all source deductions and contributions. It is also required to file RL-1 slips, which are used to report any salaries, wages, and any other remuneration paid to an employee.

Most non-profit organizations are corporations. They must therefore file a corporation return (form CO-17, *Déclaration de revenus des sociétés*) with *Revenu Québec* no later than six months after the end of their taxation year. A non-profit organization that is not claiming any tax credits may instead file form CO-17.SP, *Déclaration de revenus et de renseignements des sociétés sans but lucratif*.

Federal deductions and employer contributions

The **Canada Revenue Agency (CRA)** administers tax laws for the Government of Canada and various social and economic benefit and incentive programs delivered through the tax system.

Every organization with at least one employee must also deduct Employment Insurance (EI) premiums and income tax from remuneration or other amounts, including taxable benefits and allowances paid to employees. Organizations must remit these deductions, along with their own share of EI premiums.

Important dates for the Canada Revenue Agency (CRA)

Opening a payroll account

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Organizations with at least one employee must open a payroll account with the CRA before the 15th day of the month following the month in which they began withholding deductions from their employees' pay. In order to do so, the organization must have a *Business Number* (BN). The form for requesting a business number with the CRA can be found at:

Canada Revenue Agency Business Number Request Form

www.cra-arc.gc.ca/E/pbg/tf/rc1/README.html

Once registered, the CRA will send a letter confirming the BN, the accounts registered and a summary of the information provided, as well as a request for more information if the file is not complete.

A non-profit organization may be able to register as a charity if it meets the definition of a charity according to the *Income Tax Act*. Charitable organizations will fill out form T2050 when they register with the CRA. It is available online, along with information about how to qualify for charitable status at:

Charitable Organization Registration through the CRA

www.cra-arc.gc.ca/E/pbg/tf/t2050/README.html

Registering new employees

The organisation will have to open a payroll account and get employees to complete a TD1 form within seven days of any change or new employment.

Filing returns

Employers must annually report the employees' income and deductions on the appropriate T4 or T4A slip and file an information return by the last day of February of the following calendar year.

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Remitting deductions

Remittance due dates are always based on when an employee is paid for his or her services (pay day), rather than the pay period for which the services are rendered. The CRA will determine, based on the amount of salary paid, how often an organization is required to remit: either every month or every three months.

Canada Revenue Agency forms can be found at: www.cra-arc.gc.ca/formspubs/menu-eng.html

Important Notes Regarding Bookkeeping Practices

Accounting software

Both the Federal and Provincial governments have online tools for calculating source deductions and employer contributions. You can either print out tables to do the calculation yourself or use online their programs that do the calculations for each employee. Moreover, there are several software programs which have options specifically designed for all the accounting needs of Quebec and other Canadian non-profit organizations. For example, *Simply Accounting* and *QuickBooks* are two very popular choices.

Keeping records

Non-profit organizations are required to keep detailed registers so that the amounts indicated on their returns can be verified by either *Revenu Québec* or the Canada Revenue Agency. All registers must be retained for six years after the end of the last year to which they relate.

BEWARE!

Both the CRA and *Revenu Québec* can impose penalties on all unpaid or late-remittances. Different rates apply, but they can be steep, sometimes up to 20% of the unpaid dues. Penalties will be especially harsh if the employer deducted income from source but failed to

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remit it.

If the organization fails to pay the remittances, *Revenu Québec* and the CRA may hold the board of directors personally responsible for the unpaid amount as well as any penalties and interest owed. To avoid personal liability for unpaid remittances, a board of directors must carefully and diligently take concrete actions to ensure that their organization is up-to-date in paying its remittances.

6. THE HUMAN RIGHTS COMMISSION AND THE COURTS

Weighing the Alternatives: The Labour Relations Commission or the Human Rights Commission?

Recent court decisions in Quebec make it mandatory to bring an employment-related complaint to the *Commission des relations de travail* (CRT) and *not* to the *Commission des droits de la personne et des droits de la jeunesse* (“Human Rights Commission”). The only exception for this rule has been when an employee is being discriminated against at work, for example in cases of sexual harassment. Due to recent changes to the law, employees can now bring to the CRT a claim of psychological harassment, which includes sexual harassment and discrimination in the workplace. So, in principle, these kinds of cases can be brought to either forum, or to both.

However, organizations such as the *Groupe d'aide et d'information sur le harcèlement sexuel au travail* (GAIHST) have found it difficult to bring cases of sexual harassment to the Human Rights Commission, where they encounter especially long delays. The CRT is more accessible, but, according to GAIHST, it has not yet developed a sensitive analysis about the human rights dimensions of discrimination and sexual harassment. The CRT specializes in labour relations and not the federal and provincial human rights Charters. A committee is presently working to improve this situation by facilitating access to the Human Rights Commission and by pushing the CRT to adopt a more refined approach to the issue of sexual harassment. For information or support about sexual harassment in the workplace, contact GAIHST at:

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Groupe d'aide et d'information sur le harcèlement sexuel au travail (GAIHST)

514-526-0789

www.gaihst.qc.ca

Weighing the Alternatives: The Labour Relations Commission or the Courts?

An employee always has the right to take a case to civil court. Several factors must be considered, though, when making the decision to go to the CRT or to court. Let's use our example of Lola, who was fired from her organization for what she considered a flimsy reason. Here are but a few factors for Lola to consider when deciding between taking her complaint to the CRT or to court:

- **Lawyer's fees**
If Lola has a good case, then the CNT will pay to bring the complaint to the CRT on her behalf. If she goes to court, then she will have to pay for legal services out of her own pocket.
- **Reinstatement**
If the CRT decides the issue in her favour, then not only does it have the power to award Lola money for reasonable notice, but, depending on the circumstances, it could also force her employer to give her back her job. The court, on the other hand, can only compensate Lola by awarding her money to cover a reasonable notice period.

However, if Lola was laid off, if she didn't work for two years continuously, or if she was working as a director at the organization, then she would not be covered by the Act. She would have no choice but to bring workplace complaints to the civil courts.

References

Revenu Québec

www.revenu.gouv.qc.ca/eng/ministere/index.asp

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Information for employers: 514 873-4692 or 1 800 567-4692

Canada Revenue Agency (CRA)

www.cra-arc.gc.ca/menu-e.html

Information for Businesses: 1-800-959-5525

Information for Registered Charities: 1-800-267-2384

Commission des normes du travail (CNT)

<http://www.cnt.gouv.qc.ca/en/home/index.html>

Information Services 1 800 265-1414 or 514 873-7061

The CNT website has plenty of information about its services and about both employee and employer rights and responsibilities, as well as about complaint procedures.

Commission de la santé et de la sécurité du travail (CSST)

www.csst.qc.ca

1-877-733-6763 or cotisation@csst.qc.ca

The CSST will help those who need assistance with any of its forms

Educaloi.org

www.educaloi.org/en/loi/employees/

Educaloi.org provides a website informing Quebecers of their rights and obligations by providing legal information in everyday language. Visit the URL above for information on employee rights.

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