



**PREVENTIVE
WITHDRAWAL
FOR A
PREGNANT
OR
BREASTFEEDING
WORKER**

OHS-APT'S

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March 2008



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INTRODUCTION



The right to the preventive withdrawal for pregnant and breastfeeding worker has been in effect in Quebec since 1981, as provided for in the *Act respecting occupational health and safety*. This act, administered by the *Commission de la santé et sécurité du travail* (CSST), grants pregnant or breastfeeding workers particular protection against the risks and hazards associated with their work.

The right to the preventive withdrawal for pregnant and breastfeeding worker is a remedy that is widely known and used in the health and social services network, in particular because this work environment often entails restrictive duties and work postures. Workers are also exposed to biological and chemical agents, radiation, or other risks that may present a danger to their health or that of their children. We should also mention that women are increasingly more aware of the risks and hazards present in their work environments. It is not surprising, therefore, that they decide to assert their right to the preventive withdrawal for pregnant and breastfeeding worker.

The worker who holds a job entailing conditions that constitute a health hazard, for her or her child, has the right to be immediately assigned to safer duties and those that she is capable of accomplishing. The right to the preventive withdrawal is accordingly not a work stoppage request, nor is it a request for maternity leave. The right to temporarily cease working and receive compensation from the CSST applies only if the employer is not able to modify the worker's duties or eliminate the hazard at the source.

Although certain difficulties may arise when making a request for preventive withdrawal for pregnant and breastfeeding worker, members of the APTS must not hesitate to assert this right. They can count on their union to provide them with the tools and knowledge they need to undertake the procedure. In fact, the aim of this document is to help them submit a request for precautionary cessation of work for preventive withdrawal for pregnant and breastfeeding worker.

PROCEDURE



STEP 1

Questions the employee should ask herself

Before meeting with your attending physician, make sure you prepare an **accurate description of your duties** (work shift; work postures; force expended; handling; load to push; walking to be done; vehicle travel; handling of samples, substances, drugs; contact with hazardous materials or patients carrying diseases, viruses or receiving cancer treatments; etc.).

Also identify the **dangers present in your environment** (type of clientele, workplace, equipment used, number of employees present in the workplace, help provided, work organization, work pace, etc.).

Analyze your health status so as to determine the presence of particular conditions that, when combined with your working conditions, may represent hazards for you or your unborn or breastfed child.

Make sure your doctor shares your vision of the hazards or risks present in your work environment.

A proper environmental analysis of the workplace is the starting point for any request for preventive withdrawal. The following chart grid provides examples to help you identify risks at work. The latter fall into one of six 6 groups :

RISKS FOR PREGNANT WORKERS

RISK	EXAMPLE(S)	POSSIBLE EFFECT(S) For the worker / For the child
Ergonomic constraints and work organization		
Night schedule and rotation		For the worker: interference with sleep / For the child: prematurity and possible stunted growth
Prolonged sitting	Reception, recordkeeping; little variation in the working posture	
Prolonged standing	Long period of time standing without rest, i.e., more than 4 hours per day	For the worker: increased likelihood of hypertension, varicose veins, hemorrhoids, back pain and fatigue / For the child: spontaneous abortion, prematurity, stunted growth
Torsion, bending, trunk extension	Regularly bending over and difficulty reaching an object or person	
Lifting/moving loads	Patient transfer, moving loads	
High energy expenditure	Patient control, stopping behaviours	
Imposed, quick or forced pace	Work overload, non-replacement	
Chemical agents		
Volatile organic compounds, i.e., vapours, solvents, fumes	Use of various solvents and substances for examinations, such as toluene, xylene, formaldehyde, acetones, ethyl alcohol, VOC fumes from heated glue, methylethylcetone (MEK); use of cleaning products such as Virox, bleach, CIDEX	For the worker: increased likelihood of poisoning (liver, kidney, blood and central nervous system disorders) / For the child: spontaneous abortion, prematurity, congenital malformation, disruption of neural development
Gas	Carbon dioxide (CO ₂), waste anesthetic gasses (WAGs)	
Biological agents		
Viruses	Fifth disease, measles, chickenpox, hepatitis viruses (hepatitis A to G), HIV, cytomegalovirus, bloodborne viruses, microorganisms	/ For the child: spontaneous abortion, congenital malformation, developmental delay or development problem

Bacteria	Pertussis, meningitis, tuberculosis, salmonella, Staphylococcus aureus; contact with undiagnosed patients	/ For the child: spontaneous abortion, congenital malformation, developmental delay or development problem
Physical agents		
Noise	During activities in open areas, construction	/ For the child: repercussions on auditory development, contributes to accentuating the effects of other agents
Heat	Bad air-conditioning system	For the worker: susceptibility to respiratory, gynecological and urinary infections and to hypertension / For the child: possible vasomotor effects with prolonged exposure
Cold	Access to refrigerated areas	
Non-ionizing radiation	Flashes, glare, electricity (magnetic fields)	/ For the child: central nervous system anomalies, mental retardation; prematurity
Ionizing radiation	Use of radioactive products	/ For the child: cancer (leukemia)
Body vibration	Extended travel in automobiles, dirt roads	For the worker: increased likelihood of blood loss
Safety risks		
Falls	Wet, waxed and slippery floors; regular use of stairways to move between floors	For the worker: intrauterine bleeding / For the child: stunted growth
Physical assault	Possibility of being hit in the stomach; beneficiaries with aggressive and destructive behaviours	
Risks associated with psychological distress and psychosocial factors		
Verbal assault	Threats and coercion	/ For the child: stunted growth, prematurity
Psychological harassment	Disagreement with a superior; administrative practice aiming to destabilize a worker	
Stress	Difficulty meeting work requirements; excessive control of duties performed	

This table is not comprehensive. Other situations may arise in your work environment.



STEP 2

Certificate of precautionary cessation of work and reassignment of a pregnant or breastfeeding worker

The preventive withdrawal and reassignment certificate for a pregnant or breastfeeding worker is the key document in a request for preventive withdrawal. It is important that it be filled out as quickly as possible and to make sure that it is issued in accordance with the provisions of the *Act respecting occupational health and safety*.

This certificate is available from:

- your local CSST office;
- your establishment's health office;
- your attending physician's office;
- the CLSC in your area;
- the union local.

It must be filled out by:

- yourself; and
- your attending physician



CSST

Preventive Withdrawal and Reassignment Certificate for a Pregnant or Breast-feeding Worker

A - Identification of worker and purpose of consultation

Surname and given name at birth
Address

Application category

Nature of the danger apprehended by the worker

Describe:

Pregnancy

Expected delivery date

Year Month Day

CSST file No.

Medicare number

Social insurance number

Postal code

Area code Telephone number

Date of birth of breast-fed child

Year Month Day

Signature of worker

B - Identification of workplace and description of worker's occupation

Employer's firm name

Address of workplace

Work station and department where worker carries out duties

Name and position of the person with whom we may communicate in the enterprise

C - Compulsory consultation under the Act (The physician in charge of health services for the establishment)

Name of physician consulted

Name of the Direction de la santé publique

Receipt of Consultation



Sections to be filled

You must first fill out **sections A and B** of this certificate. These sections regard the identification of the worker, the reason for the consultation, the identification of the workplace and the job description.

Append to your request a detailed description of your workstation, describing the nature of the hazards identified. Do not assume your attending physician is familiar with your work. It is important to clearly identify all the risks entailing hazards for yourself or your unborn or breastfed child. Your attending physician will use the information provided in these two sections to perform an analysis of all the occupational risks.

Section C covers the consultation required by law. This section must be filled out by your attending physician. The latter must consult a doctor designated by the public health director of the territory in which your workplace is located. Ask that this consultation take place quickly. Exceptionally, a telephone consultation may allow the physician to produce a preliminary report. Generally speaking, your attending physician assesses the written findings or the medico-environmental consultation report issued by the doctor designated by the public health department before signing and issuing your certificate.

This examination of your workstation will probably be performed by an industrial hygiene technician, an occupational hygienist, or another professional from the CLSC's prevention department. This professional should contact you to obtain more details regarding your work. Do not assume that this person is familiar with your work. As you did with your attending physician, give as much information as possible. This visit will be deemed optional if a study recently evaluated the same duties and functions.



Your superior will probably be contacted to verify the accuracy of the information you provide. Your information and that obtained from your employer as well as the site visit will allow the designated doctor to establish whether you are eligible for a preventive withdrawal and, where applicable, starting when. He may also suggest the modification of your duties with a view to eliminating hazards.

In the end, the doctor designated by the public health department will produce a medico-environmental consultation report and send a copy to your attending physician. You may also request a copy.

Section D comprises the medical report. The attending physician must indicate the working conditions that cause or are likely to cause health problems, either for you or your unborn or breastfed child. Furthermore, the attending physician may indicate the foreseeable effects or those already observed that may be exacerbated by the working conditions.

To avail yourself of a preventive withdrawal, your physician must consider you capable of working. Indeed, the right to preventive withdrawal is conditional on the worker's availability for assignment and her capacity to perform other duties. If your health status prevents you from performing any duties, you will be considered to be in a state of disability. You will then benefit from the salary insurance stipulated in the national provisions.

PROCEDURE



Section E includes the certificate that must be filled out by your attending physician. Where applicable, he must indicate the date on which preventive withdrawal begins and sign the certificate. He may also suggest modifications to be made to make your work safe.

The designated doctor and your attending physician may disagree the hazards or to the date on which the preventive withdrawal should start. The CSST then renders a decision, taking into account the opinion of both doctors. Under the Act, your attending physician's opinion takes precedence over that of the designated doctor. However, if the designated doctor from your CLSC's prevention department does not believe any hazards exist, the CSST will most likely refuse the request for preventive withdrawal.

STEP 3

Submission of the certificate of preventive withdrawal certificate

Once your physician returns the certificate of preventive withdrawal to you, duly filled out, you must keep a copy, **give one to your immediate superior at the human resources office or health office**, and send one to the CSST regional office, via priority mail or fax, making sure you obtain a confirmation acknowledging receipt. When your employer receives a preventive withdrawal certificate, they must immediately notify your union, specifying your name and the reasons in support of the request.¹

¹ As stipulated in article 25.19 of the APTS national provisions.



STEP 4

There are four possible scenarios once the certificate has been submitted to the employer :

1. The employer proposes a reassignment that eliminates the hazards.

The employer may modify your duties, adapt your workstation or assign you to other duties not entailing any hazards. The proposed assignment must eliminate the hazards identified by your physician on the preventive withdrawal certificate. Ask your immediate superior for a detailed, written description of the new duties and functions. Your colleagues will also be informed of these modifications, which may entail a reorganization of work. You continue to work and keep all of the rights and advantages associated with the job held prior to this assignment. If the employer assigns you to other duties, make sure you are capable of performing the latter (necessary training, skills, and physical capacity).

2. The employer does not propose a reassignment immediately.

If your employer is unable of assigning you to other, safer duties, temporarily or for the duration of your pregnancy or breast-feeding period, you may cease working on the date indicated on your preventive withdrawal certificate. The CSST must then accept your preventive withdrawal and render a decision regarding your right to compensation.

Your employer must fill out and send a copy of the “*Demande de remboursement pour une affectation ou un retrait préventif de la travailleuse enceinte ou qui allaite*” [Reimbursement claim for the preventive withdrawal or reassignment of a pregnant or breastfeeding worker] form, as well as give you a copy. If they refuses to do so, advise the CSST and verify whether all of the conditions of your right to compensation have been met. In this way, you will avoid delays in the processing of your request.



Despite your cessation of work, you must remain available for an eventual assignment. Indeed, you could be called back to work at any time before the date of your maternity leave if an assignment in compliance with your preventive withdrawal certificate is offered by the employer.

3. The employer proposes an assignment that does not eliminate the hazards initially identified.

If you feel that the employer has assigned you to new duties entailing hazards already indicated on your preventive withdrawal certificate, you can object to this assignment before the CSST (see section on remedies).

The CSST may feel that your new duties are truly hazardous. You can then cease working and receive compensation from the CSST. The CSST could also not share your point of view and deem your new duties in compliance with the recommendations of the preventive withdrawal certificate. It would accordingly not pay you any benefits. In this case, after consulting with your doctor, you may cease working and request a decision on an administrative board (see section on recourses). You may also receive financial aid from the APTS for the duration of the recourse.² This financial aid is provided as a loan to members of the APTS who contest their assignment. To receive this financial aid, ask your local executive or labour relations counsellor for more information.

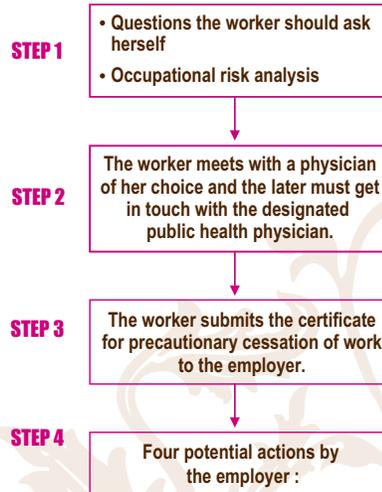
² At the General Council meeting of May 23, 2007, delegates adopted a financial support policy aiming to increase the effectiveness of the union's actions in the defence of the rights of APTS members and elected officials by ensuring financial support in the event of a loss of wages.

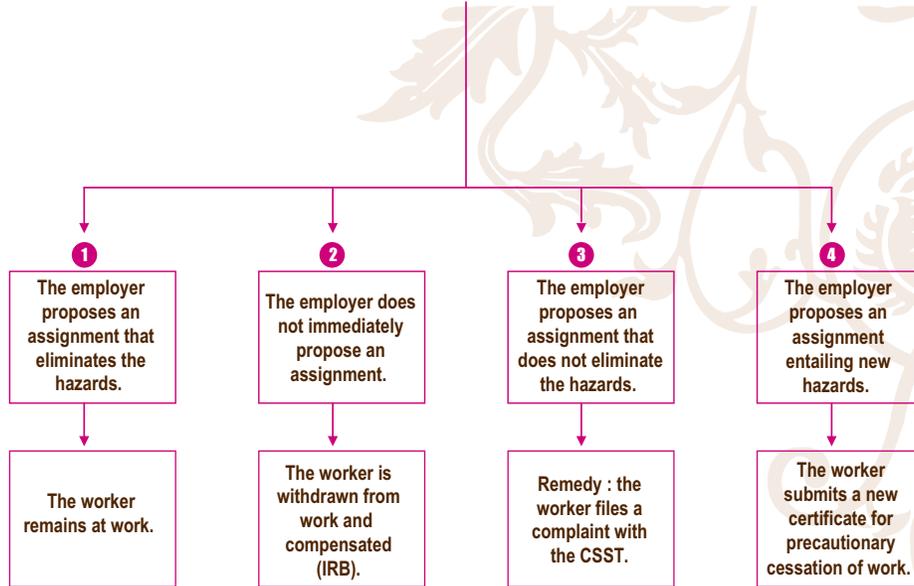


4. The employer proposes an assignment entailing new hazards.

If the proposed assignment entails new hazards not identified in the certificate of preventive withdrawal certificate for a pregnant or breastfeeding worker, you must submit a new request for a certificate and repeat the procedure described above. The CSST must then render a new decision.

STEP TO OBTAIN A PRECAUTIONARY CESSATION OF WORK FOR A PREGNANT WORKER







Income protection

The *Act respecting occupational health and safety* provides for compensation for female workers who have availed themselves of the right to the preventive withdrawal in the event of assignment to other duties or while on a preventive withdrawal.

In the case of assignment to other duties, you are entitled to all of the advantages associated with the job you held before, i.e., premiums and supplements, additional compensation and overtime hours that would normally have been worked.

When on preventive withdrawal, you will benefit from income replacement benefits calculated as follows:

- For the first five business days of the cessation of work, you will receive, from your employer, the salary you would have normally earned if you had stayed at work. The employer will not be reimbursed by the CSST for the amounts paid in this period.
- Starting on the 6th day of the cessation of work and for the 14 following days, your employer will pay you compensation equivalent to 90% of your net salary,³ for each day or portion of the day that you would normally have worked. In this case, it will be reimbursed by the CSST.

³ The net salary corresponds to the gross salary minus taxes, amounts paid to the RRQ and employment insurance contributions.



- Starting on the 20th day of the cessation of work, the CSST will pay you income replacement benefits equivalent to 90% of the net salary,⁴ until you are given an assignment, begin your maternity leave⁵ or finish breastfeeding.

The income replacement benefit is calculated based on all of your income earned from the employer, including premiums, supplements, additional compensation and overtime.

Because it is the employer that fills out the “*Demande de remboursement pour un retrait préventif ou une affectation de la travailleuse enceinte ou qui allaite*” [Reimbursement claim for the preventive withdrawal or reassignment of a pregnant or breast-feeding worker] form, you must make sure no calculation errors are made and all of your income is included.

If you do not agree with the CSST’s decision regarding the calculation of your income replacement benefit (e.g., undervalued income, unfavourable reference period), you may contest this decision (see section on remedies).

Enforcement of rights

The *Act respecting occupational health and safety* and the national provisions provide for the maintenance of all rights and advantages associated with the job, as though you had remained at work, whether while on assignment to other duties or on preventive withdrawal. You are entitled, among other things, to:

⁴ The net income corresponds to the gross annual employment income minus the taxes, amounts paid to the RRQ and contributions to employment insurance. The maximum annual insurable amounts are set each year.

⁵ Since January 1st, 2006, the four weeks preceding the anticipated due week are now paid by the new Quebec Parental Insurance Plan (70 % or 75 % of the gross income) and no longer by the CSST (90 % of the net income).



- Accumulate vacation and sick days;
- Accumulate seniority and experience;
- Maintain your participation in the life insurance and health insurance;
- Apply for any position posted;
- Obtain replacement assignments in accordance with the availability expressed by you.

Furthermore, when you return to work, the employer must reintegrate you in your usual job. If you obtained an assignment at the time of your preventive withdrawal or maternity leave and this assignment is still in effect when you return, you can obtain it.

Reprisals following the exercise of a right

It is illegal to discharge, reassign, suspend, lay off or take disciplinary or discriminatory action against a person because she or he exercised a right (in this instance, the preventive withdrawal) provided for under the *Act respecting occupational health and safety* (e.g., work hours reduced, harassment, reassignment, etc.).

If, at the time of your assignment to other duties or in the 19 first days of preventive withdrawal, the employer does not pay the compensation to which you are entitled or any of the benefits associated with your job, you can, within 30 days of becoming aware of these facts, file a complaint with the CSST⁶.

⁶ Pursuant to section 227 of the Act, the APTS developed a complaint form for reprisals from the employer following the exercise of a right, available from your local executive or labour relations counsellor.



Recourses

You have the right to contest decisions that seem incorrect to you within a time period varying between 30 and 90 days.

If you believe **that the proposed assignment entails the same hazards**, you have 30 days to request, in writing, an administrative board.⁷ If the new decision is still not satisfactory, you have 45 days to appeal to the *Commission des lésions professionnelles (CLP)*.

If you **do not agree with the decision regarding your preventive withdrawal (e.g., refusal) or your income replacement benefits (e.g., undervalued income)**, you have 30 days to request an administrative review. If the new decision is still not satisfactory, you have 45 days to appeal to the *Commission des lésions professionnelles (CLP)*.

The CSST encloses a contestation form from the Commission des lésions professionnelles when a decision arising out of an administrative board is unsatisfactory for the worker. We suggest that workers faced with such a situation seek the assistance of their union advisor.

⁷ The APTS has also developed a contestation assignments form, available from your local executive or union advisor.



Reconsideration

The CSST may, in some cases, reconsider a decision rendered:

- If information that was not known at the time that the decision comes to light;
- If new information is presented after the decision is rendered;
- Following an error.

You have 90 days to submit a request for reconsideration to the CSST.⁸

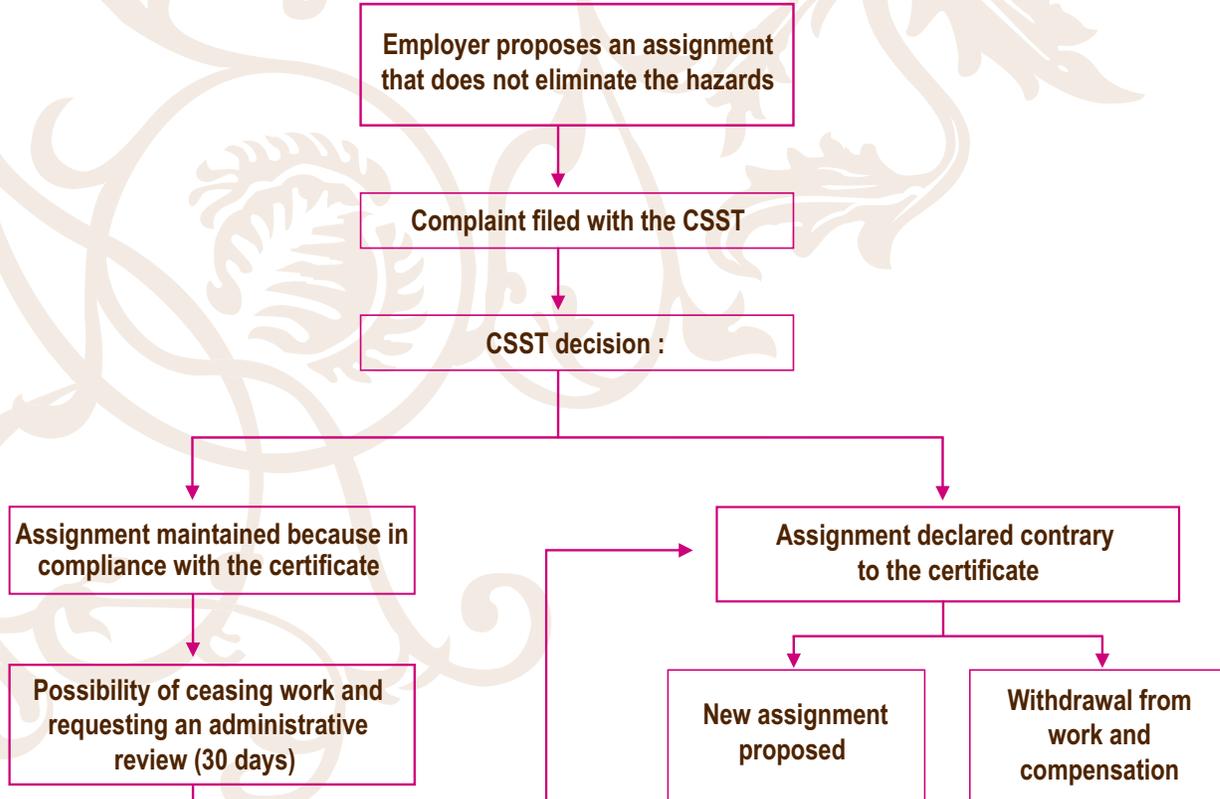
Conciliation

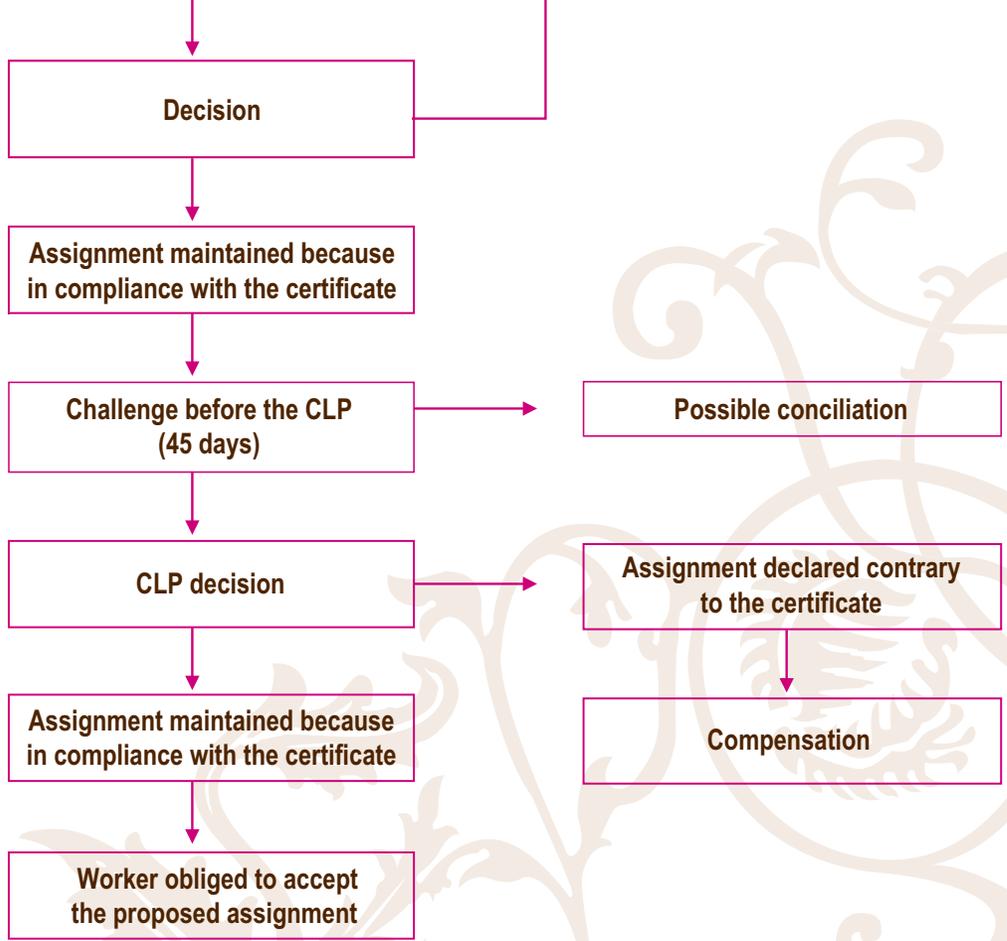
In the course of the challenge process, the CLP may offer that you take part in a conciliation process so that an agreement can be reached with the employer outside official channels:

- If an agreement is reached by the parties, the decision is final and effective immediately;
- If conciliation is not possible, the challenge process is undertaken.

⁸ You can receive information by contacting your labour relations counsellor.

REMEDIES





To contact a regional office— one number: 1 866 302-CSST (2778)



ABITIBI-TÉMISCAMINGUE

33, Gamble Street West
ROUYN-NORANDA Quebec
J9X 2R3

2nd floor
1185 Germain Street
VAL-D'OR, Quebec
J9P 6B1

BAS-SAINT-LAURENT

180, Des Gouverneurs Street
P.O. Box 2180
RIMOUSKI, Quebec
G5L 7P3

CHAUDIÈRE - APPALACHES

835, Concorde Street
SAINT-ROMUALD
Quebec
G6W 7P7

CÔTE-NORD

Suite 236
700, Laure Boulevard
SEPT-ÎLES, Quebec
G4R 1Y1

235, La Salle Boulevard
BAIE-COMEAU, Quebec
G4Z 2Z4

ESTRIE

Place Jacques-Cartier
Suite 204
1650, King Street West
SHERBROOKE, Quebec
J1J 2C3

GASPÉSIE

ÎLES-DE-LA-MADELEINE

163, Gaspé Boulevard
GASPÉ, Quebec
G4X 2V1

200, Perron Boulevard West
NEW-RICHMOND
Quebec
G0C 2B0

ÎLE-DE-MONTRÉAL

1, Complexe Desjardins
South Tower, 31st floor
P.O. Box 3, station Place Desjardins
MONTRÉAL, Quebec
H5B 1H1



LANAUDIÈRE

432, Lanaudière Street
P.O. Box 550
JOLIETTE, Quebec
J6E 7N2

LAURENTIDES

6th floor
85, de Martigny West
SAINT-JÉRÔME (Québec)
J7Y 3R8

LAVAL

1700, Laval Boulevard
LAVAL, Quebec
H7S 2G6

LONGUEUIL

25, La Fayette Boulevard
LONGUEUIL, Quebec
J4K 5B7

MAURICIE CENTRE-DU-QUÉBEC

Suite 200
1055, Des Forges Boulevard
TROIS-RIVIÈRES
Quebec
G8Z 4J9

OUTAOUAIS

15, Gamelin Street
P.O. Box 1454
GATINEAU, Quebec
J8X 3Y3

QUÉBEC

425, Pont Street
P.O. Box 4900,
station Terminus
QUÉBEC, Quebec
G1K 7S6

SAGUENAY - LAG-SAINT-JEAN

Place du Fjord
901 Talbot Boulevard
P.O. Box 5400
CHICOUTIMI, Quebec
G7H 6P8

Complexe du Parc
6th floor
1209 Sacré-Cœur Boulevard
P.O. Box 47
SAINT-FÉLICIEN, Quebec
G8K 2P8

Suite...



SAINT-JEAN-SUR-RICHELIEU

145, Saint-Joseph Boulevard
P.O. Box 100
SAINT-JEAN-SUR-RICHELIEU
Quebec
J3B 6Z1

VALLEYFIELD

9, Nicholson Street
SALABERRY-DE-VALLEYFIELD
Quebec
J6T 4M4

YAMASKA

2710, Bachand Street
SAINT-HYACINTHE Quebec
J2S 8B6

Suite RC-4
77, Principale Street
GRANBY, Quebec
J2G 9B3

Suite 102
26, Charles-De Montmagny Place
SOREL-TRACY, Quebec

This brochure is provided for information purposes and has no legal force. For more information on the preventive withdrawal for pregnant or breastfeeding workers, please see the APTS's website under SST, at the following address : www.aptsg.com.



*Alliance du personnel
professionnel et technique
de la santé et des services sociaux*

Head Office :

1111, Saint-Charles Street West, Suite 1050, Longueuil, Qc., J4K 5G4
Tel.: 450 670-2411 or 1 866 521-2411, Fax : 450 679-0107

Quebec City Office :

1305, Lebourgneuf Blvd. , Suite 200, Quebec, Qc., G2K 2E4
Tel.: 418 622-2541 or 1 800 463-4617, Fax : 418 622-0274

info@aptsq.com www.aptsq.com