Disabilities and occupational diseases: Questionnaire of the 4th Committee (2013)

General context of the questionnaire

Regardless of the eventual reimbursement of the preventive and curative health-related costs, there is the problem of providing a replacement income to the worker when he is unable to carry on his employment and earn his own income due to an illness or an accident.

<table>
<thead>
<tr>
<th>Abr.</th>
<th>Acts and regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>E.I.A.</td>
<td>Employment Insurance Act, SC 1996, c 23 (Legislature of Canada)</td>
</tr>
<tr>
<td>I.F.A.A.</td>
<td>Individual and Family Assistance Act, RSQ, c A-13.1.1 (Legislature of Quebec)</td>
</tr>
<tr>
<td>A.R.I.A.O.D.</td>
<td>An Act Respecting Industrial Accidents and Occupational Diseases, RSQ, c A-3.001 (Legislature of Quebec)</td>
</tr>
<tr>
<td>A.R.L.S.</td>
<td>An Act Respecting Labour Standards, RSQ, c N-1.1 (Legislature of Quebec)</td>
</tr>
<tr>
<td>E.I.R.</td>
<td>Employment Insurance Regulations, SOR/96-332 (Government of Canada)</td>
</tr>
<tr>
<td>I.F.A.R.</td>
<td>Individual and Family Assistance Regulation, RRQ, c A-13.1.1, r 1 (Government of Quebec)</td>
</tr>
</tbody>
</table>

Preamble

Under the Canadian Constitution, the legislative jurisdiction over labor relations is shared between the federal legislature and the provinces. The provinces are generally competent regarding labor relations in their territory. However, the Parliament of Canada has jurisdiction over labor relations for all employees of companies working in matters falling under its power to legislate according to the Constitution (ports, banks, interprovincial transportation, etc.), which represent about 10% of Canadian workers, regardless of the territory of the province in which they perform their job. The rules applying to accidents or occupational diseases therefore depend on the legislation that is competent (federal or provincial).

The federal legislature has also jurisdiction over employment insurance, which includes benefits payable as a result of illness or injury. The provinces are responsible for the last resort assistance (social security or social assistance).

Since it would be very complex to expose the different legislations in each province, the questionnaire was completed using the hypothesis of a Quebec worker whose employment is subject to the laws of the province of Quebec.
Questionnaire

[1] What are the causes which give the right to the income replacement indemnities that are paid as a result of an inability to work?

Occupational disease and accident at work (including relapse, recurrence or aggravation) entitle a worker to income replacement. In these cases, the Act Respecting Industrial Accidents and Occupational Diseases (ARIAOD) applies.

There are also income benefits in case of illness or accident not related to employment. In these cases, the collective agreement can be applied to the unionized worker. For the other workers, the Employment Insurance Act (EIA) provides for the payment of sickness benefits for a maximum period of 15 weeks.

Ultimately, the person who has a severely limited capacity for employment, or whose physical or mental condition prevents him or her from working (constraints unrelated to employment), can get social solidarity benefits under the Individual and Family Assistance Act (IFAA).

[2] Does it make a difference whether the inability is caused by a handicap, illness or accident (as a result of a professional activity or not)?

No. The legislative regime is different. In case of an accident at work or of an occupational disease, the Act Respecting Industrial Accidents and Occupational Diseases (ARIAOD) will apply. If it is an accident or illness not related to his employment, either an income insurance plan under the collective agreement, if applicable, will cover the worker inability period or else the Employment Insurance Act (EIA) will provide an health insurance benefits. Finally, as a last resort, the person affected by a severe constraint to employment (not related to the employment) or whose physical or mental condition prevents him or her from working, can get social solidarity benefits under the Individual and Family Assistance Act (IFAA). These are three separate legislative regimes operated by different organizations or institutions, according to different criterias and objectives.

[3] Does the employer need to take care of all or part of the compensation for incapacity resulting from an occupational disease of one of his workers?

- In case of an occupational disease, how is the disease found, recognized and controlled? How does the worker get the compensation for his occupational disease?
- Specify the conditions and duration of the compensation.

In Quebec, the benefits are paid by the Commission on Health and Safety (CSST) to the worker who has suffered an accident at work or an occupational disease.
The employer is required to pay 90% of the net wages to the worker for the first 14 days. He may be reimbursed by the CSST upon request (s. 59-60 ARIAOD). Subsequent benefits will be paid directly to the worker by the CSST. Funding for compensation concerning accidents at work and occupational diseases is managed by the CSST. The main source of income comes from the employers (s. 281 and 282 ARIAOD).

The Quebec legislator has created a presumption in favor of the employee for all the diseases listed in the Schedule 1 of the ARIAOD. Each listed disease corresponds to a type of work. If the worker demonstrates that he is affected by any of these diseases and that he was doing the kind of work related to it, there is a presumption in his favor that he suffers from an occupational disease. It is up to the employer then to establish that another cause is possible to explain the disease (s. 29 ARIAOD). If the worker does not have the benefice of the presumption, he has the burden to prove that the disease from which he suffers is characteristic of the work performed or is directly related to the risks peculiar to that work (s. 30 ARIAOD). When an occupational disease prevents the worker from working beyond the day when it occurs, the worker must obtain a doctor’s medical certificate and provide it to his employer or to the CSST if unemployed (s. 199, 267 ARIAOD).

The income replacement indemnity paid is equal to 90% of weighted net income that the worker derives annually from his employment (s. 45 ARIAOD). It is paid every two weeks, in the form of a pension (s. 125 ARIAOD). The weighted net income is calculated from the gross income from which certain amounts are subtracted to account for tax and contributions (s. 63 ARIAOD).

The right to an income replacement indemnity is extinguished, according to s. 57 ARIAOD, when the worker is again able to carry on his employment, at his death or when he reaches the age of 68. If the worker is over 64 years old when he suffers an injury, he may receive benefits beyond 68 years old for a maximum of four years following the beginning of his disability.

[4] Similarly, does the employer have to take care of all or part of the compensation for incapacity resulting from an accident at work of his employee?

- In case of incapacity resulting from an accident at work, specify the conditions and duration of the compensation.
- If the employer does not take care of the compensation, how is the incapacity to work resulting from an accident at work compensated?

The accident is compensated the same way as the occupational disease (see answer above). The employer covers the first 14 days of incapacity for work and he will be reimbursed the amount paid by the CSST. Thereafter, the CSST will directly compensate the worker. The regime is financed primarily by
employer’s contributions based on the nature of activities and the size of the enterprise. The number of accidents can have the effect of increasing the employer’s contribution. Therefore, he has an immediate interest in preventing accidents in his enterprise.

Under the Act Respecting Industrial Accidents and Occupational Diseases (ARIAOD), the method of claim for an accident at work is the same as for an occupational disease. The worker receives income replacement indemnity (90% of net pay) (s. 45 ARIAOD). Other benefits are prescribed by the Act such as cleaning, repair and replacement of clothing, payment of prostheses and frames of glasses damaged as a result of the accident. The worker may also claim expenses for travel and subsistence for care, medical examinations or to perform activities in a rehabilitation plan (s. 112-116 ARIAOD). The CSST will compensate directly the worker. The first 14 days that are paid by the employer may be reimbursed by the CSST.

[5] If the illness is not caused by a professional activity, is the worker still entitled to an income during the incapacity to work? If yes, to what income replacement indemnity is the worker entitled and who pays for this?

When a worker is unionized, a short and long-term salary insurance plan is generally provided in the collective agreement. In this case, it is an insurance company that pays, at the conditions agreed between the parties.

If eligible for sickness benefits under the Canadian employment insurance plan, workers can get the indemnity deposited in their bank account or get a check from Service Canada, which is a government agency that manages the Canadian Employment Insurance. Service Canada is funded by the Canadian workers. It includes an "insurance" component that covers the situations in which a worker is unavailable for work due to an illness or accident. Quebec workers will use the regime when the injury or illness is not related to the work.

Ultimately, Quebecers can get social solidarity benefits under the Individual and Family Assistance Act (IFAA). The aid is granted in the form of an allowance paid by the government (s. 71 IFAA). This regime is funded by the Quebec government.

[6] What are the conditions to be met by the worker to qualify for an income replacement indemnity (eligibility: training and payment of contributions for example; conditions for grant: being unable to work and have ceased all activity, for example)?
For the workers entitled to a private salary insurance plan through a collective agreement, the conditions negotiated will vary depending on what has been agreed between the parties.

Under the Canadian Employment Insurance plan, sickness benefits are of a particular type. They are paid only to those who are unable to work because of illness, injury or quarantine, but that would be available to work if it were not for their medical incapacity. To be eligible for benefits, the worker must generally meet the following conditions. First, he must have contributed to the employment insurance and must have worked a minimum of 600 hours for one or many employer(s) during the 52 weeks before his application for benefits. In addition, it is possible to get sickness benefits only for the weeks in which the worker's normal weekly earnings is reduced for more than 40% due to that injury, illness or quarantine (s. 6, 8 and 21 EIA, s. 14 (2) EIR).

The social solidarity program (provincial) is intended for an adult who demonstrates, by the production of a medical report, that his physical or mental condition is impaired or altered permanently or for an indefinite period of time and that for this reason and given its socio-professional characteristics, he has severe limitations to employment (s. 70 IFAA). It is a last resort program.

[7] What formalities must be met by the worker to prove his incapacity to work and have it recognized?

When the worker benefits from a collective agreement, the formalities required to obtain disability insurance benefits are fixed. Generally, it is necessary to provide a medical certificate to the employer.

To obtain a sickness benefit under the Canadian employment insurance plan, the worker must apply to Service Canada that assesses eligibility based on the information requested (s. 48 EIA). Thereafter, the worker makes a statement every two weeks on his health and his inability to work. The worker must also obtain a medical certificate signed by a health professional (s. 49 EIA). Upon request, he will provide it to Service Canada as evidence of his disability.

The person seeking social solidarity benefits from the Quebec government must complete the appropriate document (s. 30 IFAA, s. 45 IFAR). Then the person will produce a short statement on his situation on a monthly basis to continue receiving benefits (s. 30 IFAR).

[8] How is the amount of income replacement indemnity to which the worker is entitled determined? (for example: a percentage of the lost remuneration)? Does the worker's
family situation affect the amount of compensation (whether or not the worker has family members who depend on him for their income for example)?

The amount of the income replacement indemnity may vary from a collective agreement to another, depending on what has been agreed between the parties.

Generally, the base rate for the calculation of sickness benefits under the Canadian employment insurance plan is 55% of the average weekly insurable earnings of workers, up to a maximum amount. Benefits are set on a weekly basis. The maximum amount on 1 January 2013 was $501 CA (s. 14(1) EIA). Thus, the benefit is determined according to the salary the worker was receiving for his insurable employment. Marital status does not affect the determination of the amount of compensation.

For the social solidarity program in Quebec (last resort assistance), the family situation is taken into account and influences the calculation of the compensation. It takes into account several criteria such as the number of dependents (children or adults) and the partner’s situation (welfare recipient, student status, etc.) (s. 52-80 IFAR). Living alone or with a spouse also has an influence on the amount of the compensation.

[9] Is it possible to cumulate the income replacement indemnity with another income or social benefits?

Under the Canadian Employment Insurance plan, benefit calculation is done on a weekly basis. Other income of the worker (eg. Remuneration paid or payable by the employer, such as vacation pay, benefits for occupational disease or accidents, etc.) are taken into account in the calculation of benefits. Income received by a worker in a given week will reduce all sickness benefits paid to the worker for that week (s. 18-19 EIA, s. 14, 35, 36 EIR).

A worker who has used up the number of weeks of benefits available for diseases payable under the Canadian Employment Insurance Plan, normally turns to social assistance of last resort in the province. In Quebec, if the worker receives sickness benefits under Canadian Employment Insurance plan or CSST benefits under the Quebec plan, he cannot get welfare benefits, unless such amounts are below the thresholds fixed in the social solidarity program.

[10] How is the medical control of the incapacity to work done and by whom?

When the worker benefits from a collective agreement, the termination of the income replacement indemnity is determined.
For accidents and occupational diseases (CSST benefits), if the incapacity for work lasts longer than one day, the worker must obtain a doctor's medical certificate and forward it to the employer or the CSST, if unemployed (s. 199, 267 ARIAOD). In this certificate, the doctor gives a diagnosis and establishes a period of consolidation, that is an estimation of the time required to achieve the maximum state of cure of the injury or illness (s. 199 ARIAOD). Within six days of the first examination, the doctor sends a summary report to the CSST. If there is a significant change in the nature or duration of the treatment prescribed, he shall immediately notify the CSST (s. 200-201 ARIAOD).

For sickness benefits under the Canadian Employment Insurance plan, the employee provides a medical certificate signed by a physician or other health professional attesting the inability to work and stating the probable duration of the illness, the injury or the quarantine (s. 40 EIR).

As already mentioned, the social solidarity program is intended for an adult who demonstrates, by the production of a medical report, that his physical or mental condition is deficient or impaired permanently or indefinitely (s. 70 IFAA). When the government considers it appropriate, the person must undergo a new medical examination by a doctor chosen by the government (s. 31 IFAA).

[11] How is the income replacement indemnity granted and terminated (for example: is it by a decision taken by the control authority and communicated to the worker)?

If the worker is covered by a collective agreement, the maximum grant is provided for therein. It is generally limited to two years for the short-term benefits. Compensation may also be terminated if the doctor of the employer believes that the worker is no longer unable to work.

For benefits paid by the CSST, compensation ends, according to Section 57 ARIAOD when the worker is again able to perform his work, at his death or when he reaches the age of 68. If the worker is over 64 years old when he suffers an injury, he could however receive benefits beyond 68 years old for a maximum of four years following the beginning of his disability. CSST benefits are set according to a period of consolidation established by the attending physician, that is to say, an estimate of the time required for the worker to heal.

Sickness benefits, under the Canadian employment insurance plan, can be paid for up to 15 weeks per year of eligibility, and depending on the length of the period during which the worker is unable to work (s. 12(3)c) EIA). However, with few exceptions, the worker cannot receive more than 50 weeks including
all types of benefits (regular benefits, parental benefits, compassionate care benefits, sickness benefits) per year of eligibility, even if he has not yet exhausted his 15 weeks of sickness benefits (s. 12(5) *EIA*).

Under the program of social solidarity in Quebec (last resort), the granting of compensation is terminated by decision of the government when the situation changes (for example, getting a job at the end of the severe constraint on employment), making the person thereafter ineligible for this program. The person has the obligation to provide a short statement of his situation monthly (s. 30 *IFAA*).

Is there any appeal against such decisions? Before which court?

When a worker is unionized and the salary insurance benefits are refused or are terminated by the employer, he may file a grievance which will be decided by an arbitrator.

With regard to occupational diseases and accidents, both the worker and the employer can appeal against decisions before administrative tribunals.

As for sickness benefits under the Canadian employment insurance plan, the worker who feels aggrieved by a decision of Service Canada may request a review of it to the Canada Employment Insurance Commission (s. 112 *EIA*). If not satisfied with the decision following the review, the worker may appeal to the Social Security Tribunal, a Canadian independent administrative tribunal that has two levels of appeal (s. 113 *EIA*).

Finally, with respect to benefits under the social solidarity program, in Quebec, the person who feels aggrieved by a decision of the Minister may request a review within 90 days of the date on which he was notified (s. 107 *IFAA*). The review decision may, in turn, be appealed to the Administrative Tribunal of Quebec within 60 days of notification (s. 118 *IFAA*).

[12] Does the sick worker have protection against dismissal or is the employer permitted to terminate the employment agreement of sick workers at any time?

Yes, the sick worker has protection, but it varies depending if it is an employment injury (accident or occupational disease) or an accident or illness unrelated to the work.

[13] If the worker has protection against dismissal, please specify this dismissal protection.
In terms of accident and occupational disease, the Act Respecting Industrial Accidents and Occupational Diseases (ARIAOD) provides the worker a right to return to work, modulated by the nature of his employment contract with the employer, when he is again able to perform his duties. While the worker bound by a contract of indefinite duration has the right to return to work, the one bound by a fixed-term contract can only get his job back before the end of his contract, and for the remaining term of it (s. 237 ARIAOD). Section 32 of the ARIAOD also prohibits the employer from dismissing a worker who has suffered an employment injury (accident or illness) or has exercised a right conferred by this Act.

If the illness or accident is not the result of an employment injury, the Act respecting Labour Standards (ARLS) provides that a worker may be absent for a period of 26 weeks over a period of 12 months because of a disease, organ or tissue donation for transplant or an accident. However, he may be absent for a period of 104 weeks if he suffers serious bodily injury during or resulting directly from a crime offence that renders him unable to hold his regular position (s. 79.1 ARLS). To qualify for such leave, the worker must have held his employment continuously for three months. The ARLS provides that the absence is without pay. When the worker is able to work again, he has a right to return to work (s. 79.4 ARLS). The Act respecting Labor Standards is of public order and Section 122 prohibits an employer to dismiss a worker who exercises his right to absence due to illness or injury. The worker can complain to the Labour Standards Commission, an administrative tribunal (s. 123 ARLS).

[14] Does it make a difference to the dismissal protection whether the worker is unable to work as a result of handicap or chronic illness instead of a «normal illness»?

No. There is no difference. Whether it is an employment injury or an accident / illness unrelated to the job, the worker has a right to return to work when he can again occupy his position or an equivalent position. On the other side, if the illness or injury is not related to employment, protection against dismissal under the Act respecting Labour Standards (ARLS) is shorter. The worker is entitled to a maximum of 26 weeks of absence without pay. However, the Quebec Charter of Rights and Freedoms (s. 10, 16 and 20 of the Charter) provides protection against discriminatory dismissal on the basis of a person's disability.

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