

Legal framework for collective bargaining of a renewal agreement Quebec¹

Labour relations between employers and unionised employees are governed by the *Labour Code (LC)*. Collective agreements must also comply with other legislation, including *An Act Respecting Occupational Health and Safety Act* and the *Quebec Charter of Human Rights and Freedoms*.

The most important provisions of the *LC* governing collective bargaining include:

1. Establishment of Bargaining Rights by Certification

A certified trade union is the bargaining agent for the bargaining unit that the Administrative Labour Tribunal determined was appropriate for collective bargaining. The unit's scope should be included in the recognition clause of your collective agreement.

A collective agreement applies to everyone in the bargaining unit even if some employees of the bargaining unit are not members of the union [ss. 67, 69].

2. Notice to Bargain

Either party may give written notice of at least eight days of the day and hour when and the place where they will be ready to meet the other party to start collective bargaining. Such notice must be given **within the 90 days preceding the expiry, unless another period is prescribed within the agreement** [s. 52]. The notice must be delivered by fax, messenger service, registered mail, or served by a bailiff [s. 52.1].

3. Obligation to bargain in good faith

Under the *LC*, collective bargaining means first and foremost making every reasonable effort to conclude and sign a collective agreement. The parties are required by the act to engage in good faith bargaining according to the procedures prescribed by the act [s. 53].

4. Duty of Fair Representation

In representing its members, the Union cannot act in a manner that is arbitrary, discriminatory, in bad faith, or in a seriously negligent manner toward a bargaining unit member, regardless of their status as a union member [s. 47.2]. This principle applies in bargaining as well as grievances.

¹ Current as of Sept. 2023.

5. Freeze on working conditions

An employer cannot alter wages or terms and conditions of work until the right to strike or lockout is exercised [s. 59]. The union cannot encourage its members to withhold their services [s. 60], nor can it order or encourage a slackening of work or slowdown [s. 108].

6. Conciliation

In Quebec, conciliation is **not mandatory** before a union can strike or an employer can lock out. At any stage during negotiations, either party can request in writing that the Minister appoint a conciliator [s. 54], or the Minister can act on her/his initiative in appointing one [s. 55]. The parties are bound to attend meetings to which the conciliator calls them [s. 56]. At the request of the Minister, the conciliator will produce a report [s. 57].

7. Provisions governing strikes and lockouts

In order for a union to go on a legal strike (including “work to rule”) or for an employer to lock out employees, the following conditions must be met:

- a. The collective agreement must have expired.
- b. 90 days must have passed since the notice to bargain is deemed to have been received by the person to whom it was addressed [s. 58].
- c. In the case of a strike, the union must have taken a strike vote:
 - i. The vote must be by secret ballot [s. 20.2];
 - ii. Members must be given at least 48 hours’ notice of the vote [s. 20.2];
 - iii. Only union members vote [s. 20.2]; and
 - iv. A simple majority of those who voted must have voted in favour of the strike [s. 20.2].
- d. The party declaring the strike or lockout must notify the Minister within 48 hours of declaring the strike, indicating the number of employees in the bargaining unit [s. 58.1].

The LC provides for last offer votes. The Tribunal may, at the request of the employer or at its own discretion order and supervise a last offer vote. It may only order one such last offer vote per round [s. 58.2].

If the agreement contains a clause permitting the revision of specific provisions of the collective agreement before expiry, the provisions governing strikes and lockouts apply [s. 107]. Put more simply, unions can strike and employers can lockout employees on such reopeners in Quebec.

Please consult with your CAUT Senior Labour Relations Officer should your Employer propose provisions for a reopener.

The LC does not address picketing, but there is case law guiding what conduct can and cannot be restricted; consult with your CAUT Senior Labour Relations Officer immediately if your employer threatens legal action against pickets.

There is no legal right in Quebec to refuse to cross the picket line of another union (except to refuse unsafe work).

Employers cannot use replacement workers (“scabs”) in Quebec [s. 109.1].

The employer is not legally obligated to continue to make payments to pension and benefits plans or to pay sickness, pregnancy and parental, sabbatical, vacation, and similar entitlements. Strike protocols often include agreements about these provisions. As part of a strike protocol, unions should negotiate provisions to continue contributions benefit plans. The union will be expected to pay the full contributions during any strike.

Employees cannot be disciplined or fired just for participating in a legal strike or exercising other rights under the *LC*. However, they can be disciplined or fired for just cause after a strike for certain strike-related conduct (picket line violence, etc.).

8. Interest Arbitration

CAUT does not recommend that you agree to interest arbitration; your CAUT Senior Labour Relations Officer can provide information about this recommendation.

9. Ratification

In Quebec, ratification of a collective agreement is legally required. Votes must be taken by secret ballot, only members of the union can vote, and a majority of those who vote must vote in favour of the agreement before it is signed [art. 20.3].