

**THE EMPLOYEE'S RIGHTS REGARDING ARTICLE 30.1 OF AN ACT
RESPECTING COLLECTIVE AGREEMENT DECREES (UNLAWFUL DISMISSAL)
CLAIM WITH THE TRIBUNAL ADMINISTRATIF DU TRAVAIL (TAT)**

Updated as of November 2022

INTRODUCTION

An Act respecting collective agreement decrees provides that an employee who is dismissed, suspended or moved in certain specific situations, is entitled to exercise his rights against the employer. This document explains the recourse in force if you find yourself in such a situation, as well as the different steps you may encounter in order to exercise your rights.

CONDITIONS APPLYING TO THE RECOURSE

The law states three measures that you may oppose -dismissal, suspension or transfer - regardless of seniority, when one or the other of the following situation occurs:

1. You have given an information to a representative of the Parity Committee regarding the Decree
2. By reason of a complaint, information, statement of offence, or of testifying in a prosecution or investigation respecting the same
3. The employer intends to re-engage you in an inferior employment in order to evade the provisions of the Decree.

If you think one of these situations apply to you, you can file a complaint with the Tribunal administratif du travail (TAT).

Caution! If you are dismissed, suspended or transferred for another reason than the three situations mentioned above,

you are not entitled to this recourse. You should then contact the Parity Committee or the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) to find out if any other recourse apply to your situation.

EXAMPLE

An inspector from the Parity Committee comes at your work place and questions you to verify the application of the Decree.

The employer hears about it and he fires you right away. You are entitled to file a complaint with the Tribunal Administratif du travail, even if the employer gives another reason as a pretext for firing you. The employer will have to demonstrate that he had another good and sufficient reason to fire you other than having provided information to the inspector.

DELAY FOR FILING A COMPLAINT

You must file your complaint with the TAT within 45 days of calendar following the moment you were dismissed, suspended or moved. The delay starts at the moment the measure was taken against you, i.e. the day you were dismissed, suspended or transferred.

HOW TO FILE A COMPLAINT

You can send a written complaint either by fax or mail, or you can file it at the Tribunal's office, which is best to make sure the complaint is registered within the required delay (see section « *Useful links* », at the end).

There is no compulsory form required by the TAT, but it is preferable to use the one they provide, available only in French (see Appendix 1: « *Plainte en vertu du Code du travail ou d'une autre loi* »). It can be sent by mail or completed at the Tribunal's office itself. You can also download the form from the Tribunal's website (see « *Useful links* », at the end). Moreover, you must send a copy of your claim to the employer.

You will receive an acknowledgement of receipt shortly after filing your complaint. You will then be invited to contact the TAT if you wish to attend a mediation attempt with your employer.

MEDIATION

The TAT offers both sides a free mediation service to try to settle the case out of court. The mediation is conditional to both sides' agreement.

All the written or verbal information collected during mediation is confidential. It can not be considered admissible evidence if a hearing takes place after mediation has failed.

If mediation fails, you can always ask that your complaint be submitted to the TAT.

PRACTICAL TIPS

It is important to have an idea of what would be a reasonable agreement before you go to mediation. It might be useful to consult someone familiar with this kind of recourse. You can ask the opinion of a legal advisor, lawyer, or a community organization dedicated to defend workers' rights (See section « *Useful links* »).

Caution! If you come to an agreement, you might be asked to renounce any other claim or recourse taken against your employer. If you had filed a salary claim with the Parity Committee, for example, make sure you don't renounce to your recourse before discussing it with the inspector in charge.

NOTICE OF HEARING

If there is no settlement out of court, the TAT will send you a notice advising you of the moment and the place of the hearing. This notice also includes information on postponement conditions for the date of hearing and summons for witnesses. Actually, if you want to make sure that a person comes to the hearing to testify in your favour, it may be better to have him or her called as witness by means of subpoena. You may ask the TAT to issue the subpoena but you will need to contract a bailiff to notify the witnesses (See « *Useful links* » at the end). Note that the persons called as witnesses must be notified at least five (5) days prior to the hearing date.

If you do not have a lawyer or legal advisor, it might be worthwhile to pay for a legal opinion to evaluate your case and help you prepare the hearing. You may also verify whether you are entitled to legal aid (See section « *Useful links* »).

THE HEARING

The hearing before the Tribunal administratif du travail (TAT) is similar to a hearing held by any other court, although a little more informal. The persons attending the hearing will be the labour commissioner, the employer, his lawyer and yours, if applicable, the witnesses and yourself. If one side is not present, the TAT may nevertheless proceed to the hearing and deliver the decision without hearing the other side's version.

Any document you want to produce or refer to during the hearing has to be available in three copies.

Since you are the plaintiff, you are the first person to testify. In the first place, you must demonstrate that:

- ▶ Your claim was filed within the legal delay;
- ▶ You are or you were employee of the employer sued;
- ▶ A measure provided by article 30.1 of *An Act respecting collective agreement decrees* (dismissal, suspension or transfer) was taken against you;
- ▶ One of the three situations stated above applied to you;
- ▶ There is a relation between this situation and the measure taken against you by the employer.

Once you have shown these five points, there is a presumption in your favour, which means that the burden of proof now belongs to the employer. He has to prove he had another good and sufficient reason, which was not a pretext, to prescribe the measure he took against you.

When the employer or his witnesses testify, you have the right to cross-examination. If you have a witness testifying for you, the same rule apply to the employer.

When both sides have produced their proofs and witnesses, they must then plead their cause. The first to plead is the employer, then the employee. It means you must unfold the facts of the case and present your arguments to convince the TAT of the validity of your case. Once you have pleaded, the hearing is closed. Within 90 days following the hearing, the TAT will deliver a written decision stating the grounds upon which it has been delivered. The decision will be sent by mail to you and to the employer.

PRACTICAL TIPS

Always keep a polite and moderate attitude during the hearing. The labour commissioner must choose between the employer's version and yours. More often than not, he must base his decision only on both sides' testimony. Your attitude during the hearing as well as your testimony will be taken into account to establish your credibility. If you question a witness who does not tell the truth, it is more convincing to demonstrate it by the questions you ask him than by accusing him of being a liar.

THE DECISION The decision of the TAT is a final one. If you win, it may compel the employer to reimburse the amounts (salary and benefits) lost because of the measure taken against you, it may cancel that measure and/or reintegrate you to your place of work, according to the situation. After the decision was delivered, if you do not wish to return working for this employer, you may then resign without losing the amounts due to you according to the decision.

THE QUANTUM If the labour commissioner decided that the employer dismissed, suspended or transferred you illegally, he may command the employer to reintegrate you at work and to pay you an indemnity. However, the decision does not specify the amount due (i.e. the quantum). You must reach an agreement with the employer on the amount of the indemnity.

If you do get an indemnity from the employer, you might have to reimburse welfare or unemployment benefits received during the period for which you were compensated by the employer. For more information, contact your welfare or unemployment office or a specialized community organization (See section «*Useful links*»).

APPLICATION TO FIX THE QUANTUM OF THE INDEMNITY If there is no agreement with the employer on the amount of the indemnity, you will then have to send him a formal notice requiring him to pay the amount due with a detailed explanation of your calculation (See Appendix 2: «*Formal notice with calculation of the indemnity*»). If the employer still does not agree to pay, you will have to ask the labour commissioner to establish the quantum by sending the TAT an application to fix the quantum of the indemnity (See Appendix 3: «*Requête en fixation de quantum*»).

Caution! If you were dismissed, you have the obligation of minimizing the consequences of your situation. You could have to demonstrate that you have been seriously looking for work during the period running from your dismissal to the hearing of the case.

REFUSAL OF THE EMPLOYER : FILING OF THE DECISION If the employer still refuses to pay after the quantum was established, you will have to ask the TAT the authorization to file the decision at the Superior Court. The TAT will try to have the employer obey the decision, but if the attempt is ineffective, it will give you the authorization. The filing must be made within the 6 months following the date the decision was delivered. You will need a certified true copy of the decision. You must enquire at the office of the clerk of the Superior Court of yours or your employer's district of residence (See Appendix 4: «*Dépôt d'une décision du Tribunal administratif du travail*»). You should also file the decision regarding the quantum, if applicable. The same delay apply. Then, you must send a copy to the employer along with a formal notice requiring him to obey the decision of the TAT (See Appendix 5: «*Formal notice: Submission to the decision of the Tribunal administratif du travail* »).

Filing the decision of the TAT enforces it as if it were a judgment from the Superior Court. Thus, the employer who still refuses to obey could be found guilty of contempt of court and could be liable to a fine with or without imprisonment. Moreover, once the decision is filed, you are allowed to proceed to a seizure to collect the amount stated by the TAT when the quantum was fixed. Enquire with a bailiff to know how to carry over the seizure of the employer's assets (See section «*Useful links*» at the end).

CONCLUSION The present guide explains all the steps you have to go through when the employer systematically refuses to follow the decisions of the Tribunal administratif du travail. However, most of the cases are not so complex and get settled at mediation. Otherwise, most of the employers comply with the decisions of the TAT. Nevertheless, each case has his particularity. This is why this guide does not replace a lawyer or legal advisor who could advise you according to your specific situation.

PRACTICAL TIPS	Keep a copy of your the complaint you filed with the TAT : you will need it if you have to file an application to fix the quantum. Also keep carefully all correspondence with the TAT (acknowledgement of receipt, notice of hearing, decision, etc.)
⇒	Keep a copy of all relevant documents related to your work: record of employment, pay stubs, correspondence with the employer, even if prior to the events (comments or estimate of you performance, disciplinary measure, notice of termination, etc.). Also keep copy of all correspondence (formal notice or others) that you sent to the employer.
⇒	Do not wait until the day of the hearing to write down your detailed version of the events: you should start taking notes as soon as an unjustified measure is taken against you. Write down in a notebook all relevant information as soon as it happens: date of the event, what was said, who was witness, etc.
⇒	Make sure the TAT can always join you if you move or change phone number during the process. It can take many months before the whole process is completed, so always have your file updated.
⇒	Keep every document in three copies for the hearing before the TAT.

USEFUL LINKS

Institutional organizations

Tribunal administratif du travail

35 Port-Royal East, 2nd floor
Montreal (Québec) H3L 3T1
☎ (514) 864-3646 or
toll free: 1 866 864-3646
crt.gouv.qc.ca

Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)

☎ 1 800 265-1414, (514) 873-7061
Fax : (514) 873-7900
cnesst.gouv.qc.ca

Barreau du Québec

(to be referred to a lawyer)
☎ (514) 954 3400 or 1 800 361 8495
barreau.qc.ca/en/

LEGAL AID:

Commission des services juridiques

☎ (514) 873-3562
Fax: (514) 873-8762
csj.qc.ca

Chambre des huissiers du Québec

(to contract a process server)
☎ (514) 721-1100
Fax: (514) 721-7878
huissiersquebec.qc.ca

Courthouses of Québec

To know how to join the Superior Court or to find your judicial district, consult the website of the ministère de la Justice:
justice.gouv.qc.ca/english/joindre/palais/palais-a.htm

Community organizations

NON UNIONIZED WORKERS RIGHTS :

Au bas de l'échelle

☎ (514) 270-7878
aubasdelechelle.ca

Carrefour d'aide aux non-syndiqué(e)s de Trois-Rivières (CANO)

☎ (819) 373-2332
canosmauricie.org

UNEMPLOYMENT:

Mouvement Action-chômage de Montréal

☎ (514) 271-4099
macmtl.qc.ca

Comité chômage de Montréal

☎ (514) 933-5915

Comité chômage de l'Est

☎ (514) 521-3283
ccem.ca

WELFARE :

Organisation d'aide aux assistés sociaux (ODAS)

2515 Delisle, office 209
Montréal (Québec) H3J 1K8
☎ (514) 932-3926

Organisation populaire des droits sociaux (OPDS-RM)

3340, rue Ontario E
Montréal (Québec) H1W 1P7
☎ (514) 524-6996
opdsrm.com

Without prejudice

Certified mail

(date)

(name of the company)

(address of the company)

(name of the person in charge)

SUBJECT : (name of the employee) - VS - (name of the employer)
Decision from the Tribunal administratif du travail: formal notice and calculation of the indemnity

Sir, Madam,

Please find enclosed a copy of the decision from the Tribunal administratif du travail regarding the case above mentioned.

As stated in the decision you have to pay me an indemnity for the loss of salary and benefits I suffered following the (dismissal, suspension or transfer) imposed to me.

Consequently, you are formally asked to pay me an indemnity to the amount of \$_____, which represents the equivalent of the salary and benefits lost because of the (dismissal, suspension or transfer) you imposed me, as well as the interest and additional indemnity provided by the law.

The calculation is established as follows : Example of calculation

I was dismissed and I filed a complaint on September 10, 2021. The decision was delivered on July 29, 2022. Subsequently, I resigned. You must then pay me an indemnity for a period of 46 weeks (from September 10, 2021 until July 29, 2022)

Number of weeks from the date of the complaint to the date of the decision	ex. :	46 weeks
Multiplied by the average weekly salary	ex. : 35h at 19.47\$/hour	x 681.45 \$
	total :	31346.70 \$
Benefits lost: (RRSP 35h X 46 X 0.45\$)		+ 724.50 \$
	total:	32071.20 \$
Benefits lost: (vacation pay 6% of 32071.20\$)		+ 1924.27 \$
	total :	33995.47 \$
minus salary earned elsewhere during the period: (ex: 20 weeks (30h X 19.18\$) + (30h X 0.45\$) = 588.90\$		- 11778.00 \$
Total		22217.47 \$
Interests		+ 1176.01 \$
Total to pay:		23393.48 \$

(Calculation of interests: multiply the total due (22217.47 \$) X 6% (legal rate and additional indemnity *)
Multiply the result (1333.05 \$) by the number of days between the filing of the claim and the date the decision was delivered, then divide by 365 (number of days in a year) Ex: 46 weeks = 322 days/365 days, so 1333.05 \$ X 224/365 = 1176.01 \$).

If you do not comply with this demand within 10 days, I will have no other alternative than take the appropriate legal procedures required, without any other advice or delay.

* Legal rates and additional indemnity up to date as of October 1, 2010. Check with Ministère du Revenu du Québec for the updating of the rate (<http://www.revenu.gouv.qc.ca/ENG/ministere/taux/creance.asp>).

Please act accordingly

(signature)

(Name in printed letters)

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE _____

No: (numéro de cause)

TRIBUNAL ADMINISTRATIF DU TRAVAIL
35, rue de Port-Royal est, 2^{ième} étage
Montréal (Québec) H3L 3T1

(nom de la ou du salarié), domicilié et résidant au
(adresse), district de _____
Requérant

c.

(nom de l'employeur), personne morale légalement
constituée (ou personne physique si l'entreprise n'est pas
incorporée) ayant son siège social et sa principale place
d'affaires au (adresse de l'entreprise), district de _____,
Intimée

REQUÊTE EN FIXATION DE QUANTUM
(Article 30.1 L.D.C.C. et Article 19 C.t.)

AU TRIBUNAL ADMINISTRATIF DU TRAVAIL, LE REQUÉRANT EXPOSE CE QUI SUIT :

1. En date du (date du dépôt de la plainte), le requérant déposait une plainte au tribunal administratif du travail en vertu de l'article 30.1 de la *Loi sur les décrets de convention collective*, le tout tel qu'il appert d'une copie conforme de ladite plainte produite au soutien des présentes sous la cote R-1;
2. En date du (date de la décision du commissaire), le tribunal administratif du travail rendait une décision ordonnant à l'intimée de (description de l'ordonnance du commissaire) et de verser au requérant, à titre d'indemnité, l'équivalent du salaire et autres avantages dont l'avait privé (le congédiement, la suspension ou le déplacement, selon le cas), le tout tel qu'il appert d'une copie conforme de la décision produite au soutien des présentes sous la cote R-2;
3. En date des présentes, les parties n'ont pu s'entendre sur le quantum de l'indemnité due au requérant par l'intimée;
4. Le requérant réclame de l'intimée la somme de (indiquer le montant) à titre d'indemnité s'établissant comme suit : (Décrire le calcul de l'indemnité)
5. L'intimée refuse ou néglige de verser au requérant la somme ci-dessus mentionnée bien que dûment mise en demeure de ce faire par lettre en date du (date de la mise en demeure) dont l'intimée est sommée de produire l'original et dont copie est produite au soutien des présentes sous la cote R-3
6. La présente requête est bien fondée en fait et droit.

PAR CES MOTIFS, VOUS PLAISE :

ACCUEILLIR la présente requête;

FIXER le quantum de l'indemnité due au requérant;

ORDONNER à l'intimée de payer au requérant la somme de (indiquer le montant) avec intérêts en plus de l'indemnité additionnelle équivalant au pourcentage égal à l'excédent du taux d'intérêt fixé suivant l'article 28 de la *Loi sur le ministère du Revenu* (L.R.Q., c. M -31) sur le taux légal d'intérêt, depuis le dépôt de la plainte en date du (date du dépôt de la plainte).

Montréal, ce (date de la requête)

(signature)

(nom du requérant en lettres moulées)

Requérant

CANADA

PROVINCE DE QUÉBEC

DISTRICT DE _____

No : (numéro de cause)

COUR SUPÉRIEURE

(nom de la ou du salarié), domicilié et résidant au

(adresse),
district de _____,

Requérant

c.

(nom de l'employeur), personne morale légalement
constituée *(ou personne physique si l'entreprise n'est
pas incorporée)* ayant son siège social et sa principale
place d'affaires au (adresse de l'entreprise), district de
_____.

Intimée

**DÉPÔT D'UNE DÉCISION DU TRIBUNAL ADMINISTRATIF DU TRAVAIL
(Article 30.1 L.D.C.C. et Article 129 C.t.)**

Dûment autorisé pour ce faire, le requérant dépose avec la présente, une copie conforme de la décision du tribunal administratif du travail, rendue le (date où la décision a été rendue) pour valoir à toutes fins que de droits.

Montréal, ce (date de la requête)

(signature)

(nom du requérant en lettres moulées)

Requérant

Without prejudice

Certified mail

(date)

(name of the company)

(address of the company)

(name of the person in charge)

SUBJECT: (name of the employee)- VS- (name of the employer)
Formal notice: Submission to the decision of the Tribunal administratif du travail

Sir, Madam,

Please find enclosed a copy of the request by which I filed the decision of the Tribunal administratif du travail at the Superior Court, regarding the above-mentioned case.

The filing of the decision enforces it as if it were a judgment from the Superior Court, on and after the (date of the filing at the court), date of this filing.

Consequently, you are hereby formally advised to:

- (if applying) reinstate me at my workplace with all my rights and privileges.
(and/or)
- pay me as an indemnity the amount of \$ _____, which represents the salary and benefits lost because of the (dismissal, suspension or transfer) you imposed me, and includes the interests and additional indemnity provided by the law.

If you do not comply with this demand within 10 days, I will have no other alternative than take the appropriate legal procedures required, without any other advice or delay.

Please act accordingly.

(signature)

(Name in printed letters)