

# False Statement To The CNESST: The Court Finds A Worker Guilty Of An Offence



It's common knowledge that a Québec worker who has suffered an employment injury is entitled to an income replacement indemnity from the CNESST under the *Act respecting industrial accidents and occupational diseases* (the "Act") if the employee can't work because of the injury and regardless of who is responsible for it.

Under this compensation plan, a worker is presumed unable to work until the employment injury has consolidated. Once the injury has consolidated and the worker no longer has any functional limitations, they must advise the CNESST. In most situations, the worker's right to an income replacement indemnity will end at this point. The Act also provides a more general obligation for a worker to advise the CNESST of any change to their situation that could impact their rights under the Act, including the amount of the indemnity they're entitled to.

What happens if a worker learns from their doctor that the injury has consolidated and returns to work (for their current employer or a new employer) but doesn't immediately advise the CNESST? In this case, the CNESST can claim a reimbursement of the indemnity it overpaid to the worker. Is the worker subject to other penalties in this situation?

The answer to this question is "yes." A worker's false statements, or their failure to inform the CNESST of changes to their situation, can result in penal proceedings. The Act places strict obligations on individuals receiving compensation, in particular concerning transparency and the information they're required to provide, and imposes fines ranging from \$1,000 to \$10,000 for a breach of these obligations.

A penal investigation can be carried out by investigators of the CNESST's Direction des enquêtes et de la lutte contre la malversation [investigations and anti-misconduct division], which has broad powers to uncover the truth. Such investigations are launched after the CNESST receives a complaint or as part of an internal initiative.

Though the penal provisions have been in force for a while, the courts have seldom dealt with this type of case and hadn't examined these issues in some time. A recent decision of the Court of Québec handed down on June 21, 2024 in [\*Commission des normes, de l'équité, de la santé et de la sécurité du travail c. Leblanc\*](#) clearly illustrates the consequences of a worker making false statements to the CNESST.

## Recent case of CNESST c. Leblanc

In this case, a worker was found guilty of three offences because he hadn't immediately advised the CNESST of a change to his situation that could impact his right to an income replacement indemnity. He had also made false statements to the CNESST.

After being injured on the job, the worker received an income replacement indemnity under the compensation plan provided by the Act. The employee returned to work but didn't advise the CNESST on two occasions. He also made three false statements to CNESST agents that he wasn't working. He was therefore receiving an income replacement indemnity while also earning employment income. This article focuses on the consequences of false statements to the CNESST.

The first two charges involved false statements the worker allegedly made to the CNESST, in other words, that he wasn't working and wasn't able to. The CNESST, as the prosecutor in the case, was required to demonstrate that the defendant had made a false statement. The court found that the worker had in fact started working for a new employer and that he had stated the contrary to a CNESST officer. The court ruled that all of the essential elements of the offence were proven beyond a reasonable doubt.

The third charge concerned the worker's failure to immediately inform the CNESST that he had a new job. Since he was receiving an income replacement indemnity, the fact that he was earning a salary should have impacted the amount of the indemnity. The prosecutor was also required to demonstrate that the worker hadn't advised the CNESST about his new job while he was receiving an indemnity under the Act. The court concluded that the prosecutor had established all of these elements beyond a reasonable doubt.

Some of the evidence presented at the hearing originated from the worker's Facebook account: he had posted twice about a new job during the period at issue.

## Interesting precedents

The offence provided in section 463 of the Act applies when a worker acts with the intention of obtaining a benefit they know they're not entitled to, or by omitting to act with the intention of obtaining the same objective.

In [\*Commission de la santé et de la sécurité du travail c. St-Pierre\*](#), the defendant was accused of failing to notify the CNESST of a change in his situation. The court explained that the prosecutor must prove a dishonest intent or an intention to mislead or deceive. An inaccurate statement alone isn't enough; it must clearly be false, which means the defendant was aware he was providing false information. The court also held that it's essential to establish, in addition to the accused's deliberate act, a state of mind indicating an intention to avoid the application of the Act or to get around it. Courts have ruled that this offence requires evidence of an objective intention, in other words, the result obtained is what a reasonable person would think was a normal consequence of their actions.

In [\*Commission de la santé et de la sécurité du travail c. Seymour\*](#), the defendant had offered to help his friends start up a business shortly after he stopped working. It involved about 10 hours of work per month without financial compensation. The court held that although the work was limited in time, he was providing an activity for the benefit of the business. The worker was charged with failing to declare to the CNESST that he was working while receiving an indemnity, which is an obligation under the Act.

The court held that a purely voluntary activity doesn't necessarily impact the right to or amount of an indemnity; however, because the activity could potentially impact the employee's right to compensation, he had an obligation to inform the CNESST. The court stated that it isn't up to the worker to determine the relevance or importance of changes in his situation.

## **Obligations toward the CNESST**

The decision in the recent case of *CNESST c. Leblanc* serves as a reminder that workers receiving an income replacement indemnity have an obligation to provide information to the CNESST and that they must be transparent about changes in their medical condition. Breaching these obligations can have serious penal consequences for workers who disregard them.

Lastly, employers also have an obligation to immediately inform the CNESST when their employees return to work after an employment injury. If employers don't comply with this requirement, they too can face similar penal charges.

*The authors are grateful to law student Andréa Nicolò for her invaluable contribution to this article.*

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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