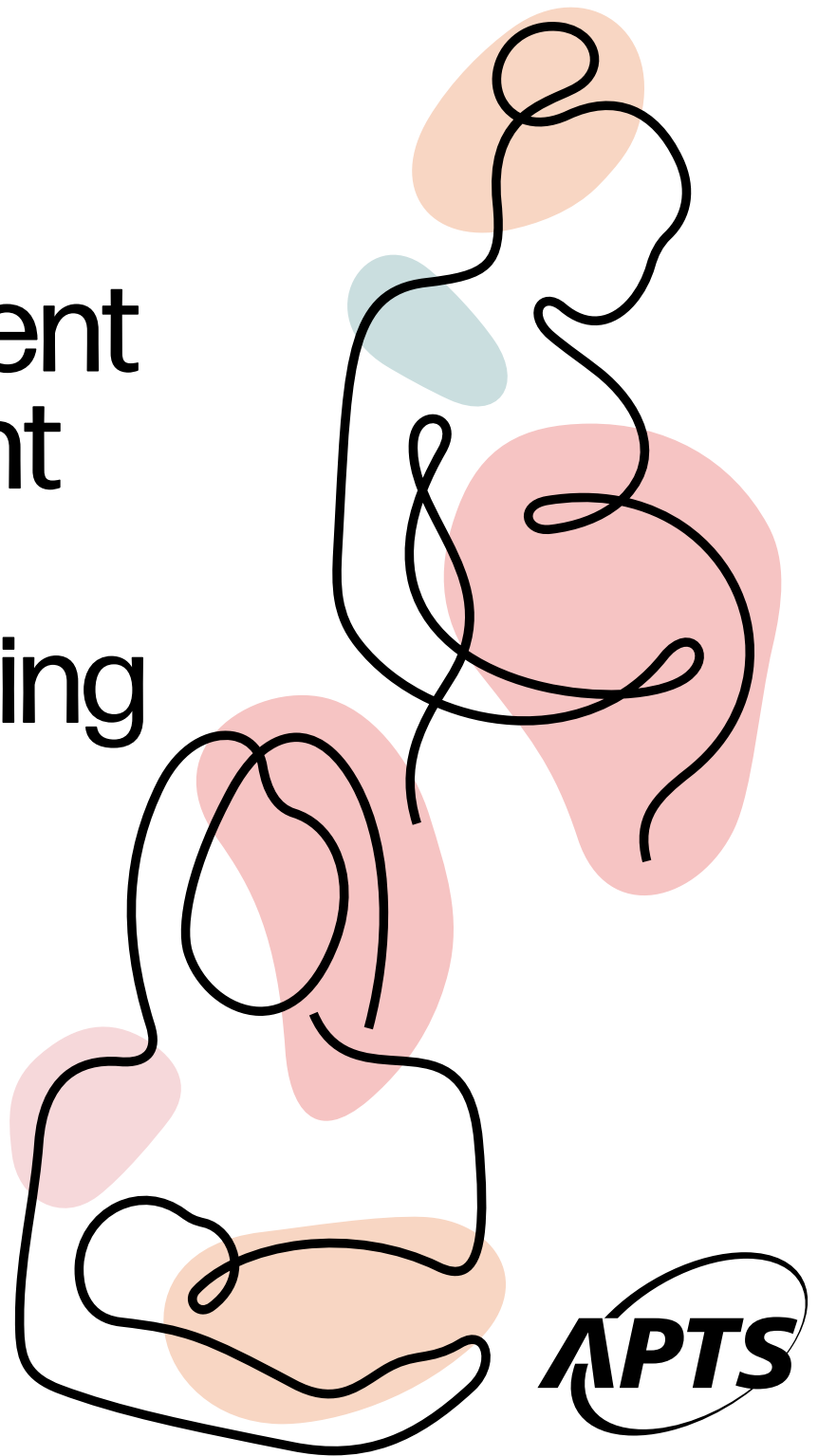


Protective
leave or
reassignment
for pregnant
and
breastfeeding
workers





The *Act respecting occupational health and safety* (LSST) is administered by the CNESST (Québec's labour standards, pay equity, and health and safety commission).

Protective leave or reassignment for pregnant and breastfeeding workers*

Are you pregnant or breastfeeding your baby? The *Act respecting occupational health and safety* provides specific protection against risks and dangers you may encounter at work. The right to protective leave or reassignment for pregnant and breastfeeding workers has been in force in Québec since 1981, and new provisions came into effect on January 1, 2023.

Once you've read this brochure, feel free to contact your local APTS team if you have any questions or run into any obstacles. They can help see to it that your rights are upheld.

Purpose of protective leave or reassignment (RPTE-RPTA)

The RPTE-RPTA is a prevention program aimed at keeping medically fit workers on the job. It is not a request to stop working or to take maternity leave. Pregnant or breastfeeding workers may be removed from their workplace altogether if no other positions or duties are available.

Protective leave or reassignment for pregnant workers (RPTE) involves assigning workers to other duties that they can reasonably perform without risk to themselves or their unborn child.

Protective leave or reassignment for workers who are breastfeeding (RPTA) involves assigning workers to other duties that they can perform without risk to their child, but is not intended to remedy breastfeeding difficulties.

Workers who temporarily stop working are entitled to an income replacement indemnity.

Changes in force on January 1, 2023

Protocols¹ for identifying the hazards specific to each work environment are developed and posted on the CNESST website.

Attending physicians are no longer the only ones authorized to issue a certificate for protective leave or reassignment of workers who are pregnant or breastfeeding (*Certificat visant le retrait préventif et l'affectation de la travailleuse enceinte ou qui allaite*). Any health-care professional who is monitoring a pregnancy or providing post-natal supervision can issue one. If you're followed by a nurse clinician or midwife, you can ask them for a certificate.

How to obtain a protective leave certificate

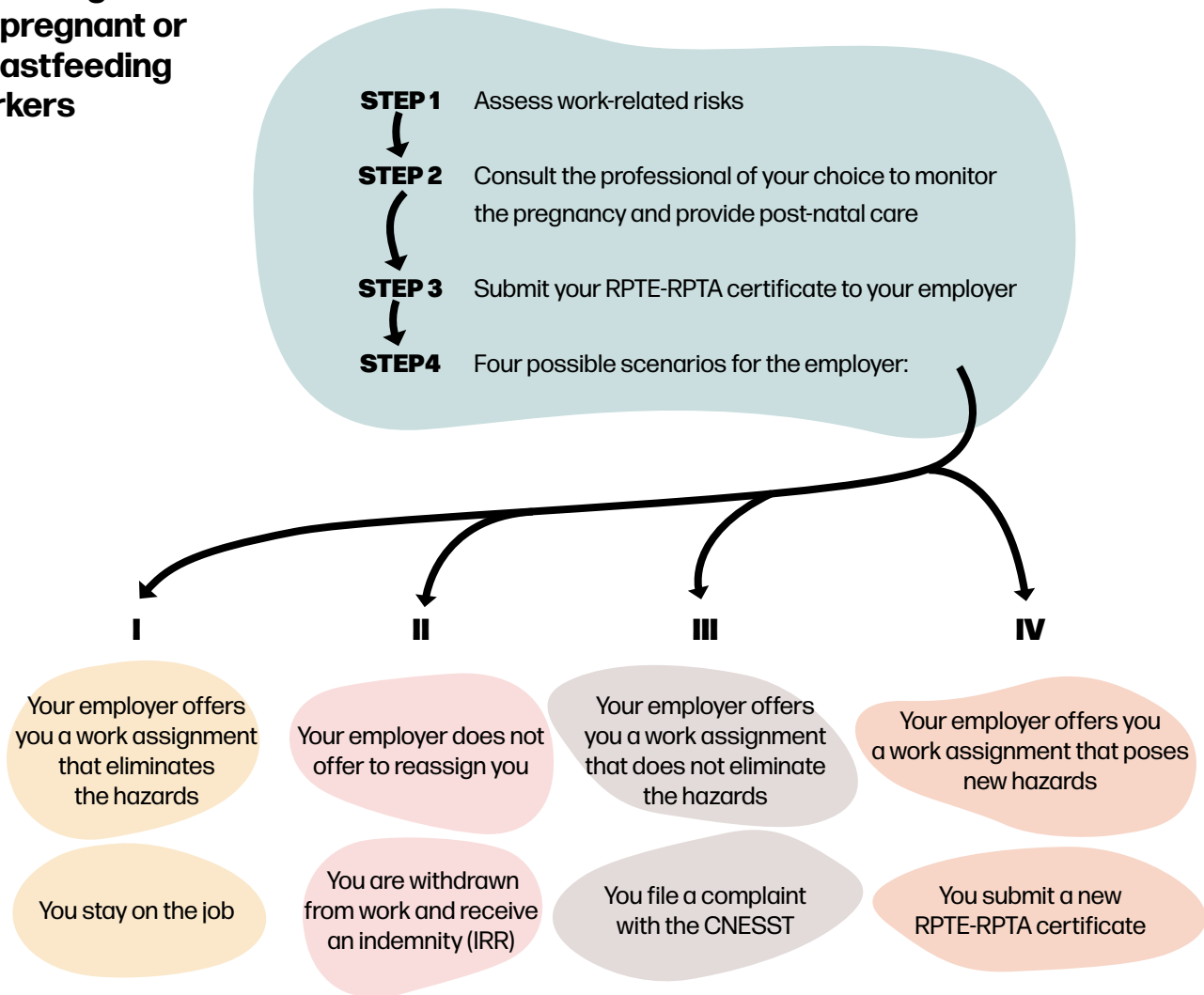
The steps involved in obtaining a protective leave certificate consist mainly of identifying workplace risks and consulting a health-care professional who is monitoring the pregnancy or providing post-natal care.

* In the APTS collective agreement, "protective leave or reassignment" is the English translation of the French term "retrait préventif." However, the CNESST (Québec's labour standards, pay equity, and health and safety commission) and other Québec government agencies translate "retrait préventif" as "preventive withdrawal."

¹ In order for workers to exercise these rights, Québec's public health director develops and updates protocols for identifying work-related hazards (including hazardous working conditions), and may consult a variety of experts and public agencies in the process (section 48.1, LSST).

The protocols developed by the public health director are sent to the CNESST to be posted on its website (section 48.2, LSST).

Steps to obtain protective leave or reassignment for pregnant or breastfeeding workers



1. Identify hazardous working conditions

We recommend that you identify all the risks and hazards of your job – whether chemical, biological, physical, ergonomic, psychosocial, or safety-related – before talking to the health-care professional who monitors your pregnancy or provides post-natal care. The union can help you draw up a list of the risks and hazards associated with your specific job title.

- Work shift
- Number of work hours
- Rotating schedule
- Lifting or pushing heavy loads
- Bending or twisting movements
- Exertion of force
- Certain postures (prolonged sitting or standing)
- Walking required (duration, frequency, distance)
- Work-related car trips (travel distance and length of trip)
- Handling samples, substances, bodily fluids, medications, hazardous materials, etc.
- Contact with service users (who may be ill, carrying viruses, undergoing cancer treatment, etc.)
- Type of clientele

The employer must:

- ▶ eliminate the danger at the source
- ▶ adjust your duties
- ▶ adapt your work station and workspace
- ▶ assign you to safe duties that you can reasonably perform, while paying your usual salary.



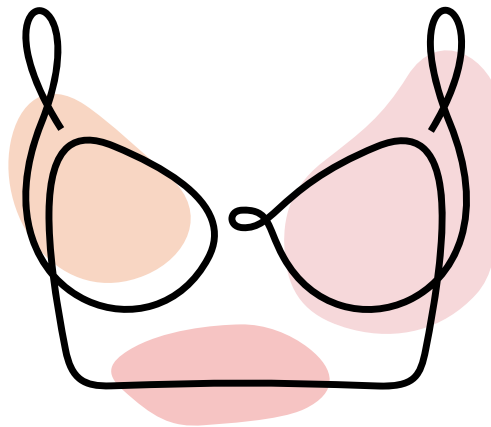
- Risk of violence by service users
- Physical work environment (elevator, stairs)
- Equipment or supplies used
- Providing assistance
- Number of employees at the workplace
- Organization of work
- Pace and rhythm of work (intense pace imposed by employer)
- Stress, overly regimented tasks
- Harassment, threats or verbal coercion

2. Talk to the health-care professional who is monitoring your pregnancy or providing post-natal care

Describe the situation and specify your concerns about the risks and hazards of your job.

It's up to the health-care professional to assess your situation based on the risks and hazards associated with your job. They must be able to determine, according to the established protocols, if there is any physical danger to your unborn child, to yourself (in relation to the pregnancy) or to your nursing infant.

If there is no protocol established for these work-related hazards: Before issuing the *Certificat visant le retrait préventif et l'affectation de la travailleuse enceinte ou qui allaite*, your health-care professional must consult with an occupational health physician or, failing that, the public health director for the region in which your institution is located or the relevant person designated by the director.



3. Obtain your protective leave or reassignment certificate

Once you obtain the necessary CNESST certificate attesting to the physical hazards in your work environment, you must submit it to your employer.

Work stoppage for medical reasons

If your pregnancy endangers your health or that of your unborn child, you need to request a leave of absence due to pregnancy complications rather than a protective leave or reassignment. This type of leave of absence is granted for medical reasons related to pregnancy and it could entitle you to disability insurance benefits, as per the terms and conditions of Article 30 of the current APTS collective agreement.²

² <https://drive.google.com/file/d/1m3V7RohK1JQ5yD3IFcvPLiLyuGLRVwgU/view>

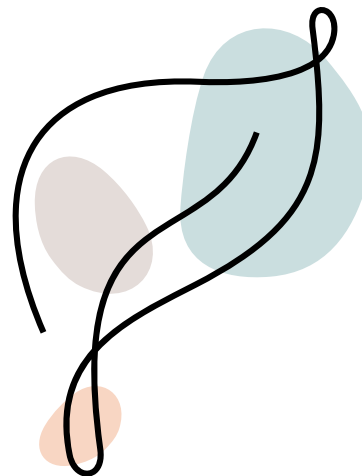
4. Possible outcomes once the certificate has been submitted

- I. Your employer offers you a safe assignment that eliminates the hazards.
 - The employer adjusts your duties, adapts your workspace or assigns you to safe duties that you are reasonably capable of performing.
 - You retain the salary and benefits³ of the job you had before being reassigned.
- II. Your employer does not immediately offer you an assignment.
 - You stop working immediately and receive the income replacement indemnity provided for under the *Act respecting occupational health and safety* (see the section on benefits and withdrawal from work, below).
 - The work stoppage is temporary until you are offered an assignment consistent with your certificate of protective leave or reassignment, or if the work stoppage begins up to four weeks before your estimated delivery date or at the end of your breastfeeding period.
 - You retain all benefits of the job you held before you stopped working.

N.B. The employer can call you in at any time to propose an assignment.

3 - These include the right to accumulate vacation and sick days, to accumulate seniority and experience, to maintain your life insurance and health insurance coverage, to apply for any job posted, to receive replacement assignments as per your availability.

4 - "Delivery" means the natural or lawfully, medically induced end of a pregnancy by childbirth, whether or not the child is viable." (Section 40 of the *Act respecting occupational health and safety*).



- III. The employer offers you an assignment that fails to eliminate the hazards specified on your protective leave or reassignment certificate.
 - You must contact the CNESST to ask it to rule on whether the assignment offered by your employer is consistent with your certificate. While waiting for the CNESST's decision, you can decide to remain on the assignment or choose to stop working. If you choose not to carry on with the assignment, you will not immediately receive the income replacement indemnity; it will be paid retroactively if the CNESST decision confirms that the assignment involves the same hazards. See the section on contesting a decision, below, for more information on this process.
- IV. The employer offers you an assignment that poses new hazards :
 - You must consult your health-care professional again for confirmation of the presence of new hazards and obtain a second protective leave or reassignment certificate

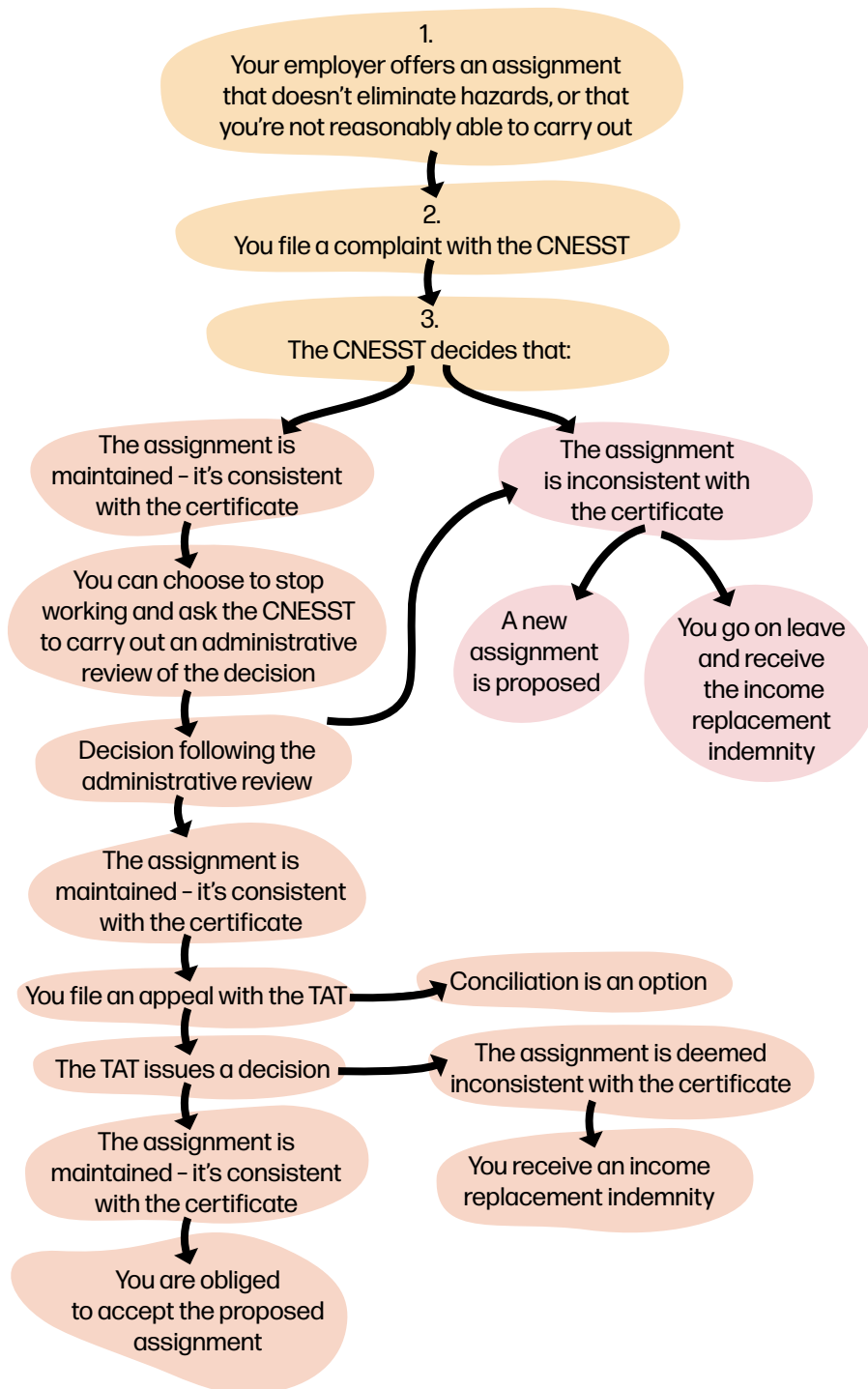
What you can do if an assignment is not consistent with your protection

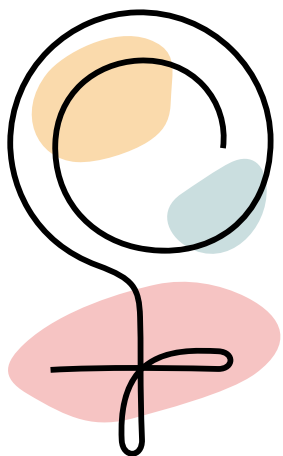
Problems and recourses

1) Contesting an assignment that involves the same hazards

If you're assigned to a position or duties that involve the same hazards as those indicated on your protective leave certificate, you can contest this assignment. While doing so, you can either keep on working at the assignment or choose to stop working. If you stop working, your income replacement indemnity will no longer be paid, but you will receive it retroactively if the CNESST confirms that the same hazards are present.

If your employer proposes an assignment that you're not able to carry out, contact your local APTS team for help.





2) Contesting an assignment that involves new hazards

You can request a new protective leave certificate, confirming the new hazards, and give it to your employer. The CNESST will make a decision within 20 days of your request.

If you don't agree with that decision, you have 10 days to request an administrative review. If you want to contest the outcome of the review, you have 10 days to file an appeal with the Administrative Labour Tribunal (TAT).

Work stoppage and indemnities

If you stop working, your employer is required to pay for the first five days of your work stoppage.

After that, you will receive indemnities as set out in the *Act respecting industrial accidents and occupational diseases* (LATMP).

- Your employer pays 90% of your net salary⁵ for 14 full days following the first 5 working days of your work stoppage,⁶ starting on the 6th day. This payment covers every full day or partial day you would normally have worked.
- Starting on the 20th day and until you either receive a work assignment, begin your maternity leave or stop

breastfeeding, you will receive compensation from the CNESST equal to 90% of your net income.⁷ Your income replacement indemnity is calculated on the basis of your total remuneration, including premiums, supplements, additional compensation and hours of overtime.

- You will receive the income replacement indemnity up until 4 weeks before the expected date of birth. If the date changes, you must notify the CNESST, and the amounts paid to you will be adjusted. When you stop receiving the income replacement indemnity, you can start receiving QPIP benefits. If you're not eligible for these benefits, you can continue to receive the income replacement indemnity until you give birth, once you've made the required arrangements with the CNESST.

If you're receiving the income replacement indemnity but are no longer exposed to hazards, the CNESST may suspend payment of the indemnity. If you resign, voluntarily leave your job or are laid off, or if your pregnancy ends or is terminated, the CNESST may permanently stop paying your income replacement indemnity, since there is no longer any hazard for you or your unborn or breastfeeding child.

5- Your net salary is your gross salary minus taxes, QPP contributions, and employment insurance premiums.

6- Working days may be consecutive if your department provides hours of service over the weekend or on statutory holidays. Otherwise, "five working days" is taken to mean five calendar days after the certificate is submitted.

7- Your net income is your gross annual employment income minus taxes, QPP contributions, and employment insurance premiums. Maximum insurable earnings are determined every year.

Recourses with regard to the income replacement indemnity

1. You don't agree with the CNESST decision

If you believe that your rights have not been respected in the context of the "For a Safe Maternity Experience" program, you can make a written request for administrative review within 30 days of the CNESST decision

Eligibility for the program, the amount of the indemnity you receive starting on the 20th day, and the payment notice (indicating the beginning and duration of your CNESST indemnity) are some of the elements you may want to challenge.

The CNESST will then issue a new decision.

2. You don't agree with the outcome of the administrative review

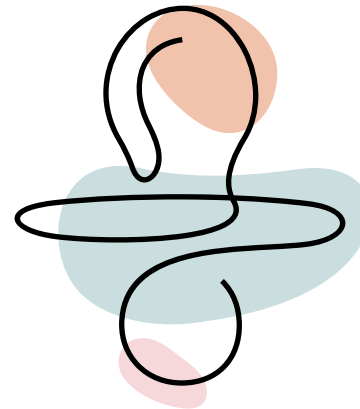
Once you are notified of the CNESST's new decision, you have 45 days to appeal this decision before the TAT..

3. Administrative Labour Tribunal (TAT)

The TAT's decision is final and cannot be appealed.

The CNESST may reconsider a decision within 90 days of being informed of a fact that was not known at the time the decision was given, or within 90 days of a decision based on an error.

Errors or new information may include errors regarding a date or the number of dependents, a data entry error, a miscalculation, a new diagnosis that was not available when the decision was made, a new diagnosis that was available but not known when the decision was made, an investigation report, a false statement, or a voluntary omission.



Reprisals after you exercise a right

If you exercise your right to protective leave or reassignment as a pregnant or breastfeeding worker, and you are then faced with one of the following problems:

- suspension
- unjustified displacement
- lay-off
- reprisals or disciplinary or discriminatory measures
- dismissal
- non-payment or incomplete payment of the amount due for the first 14 days

you may, within 30 days of the penalty or measure, file a complaint with the CNESST⁸ or a grievance following the procedure set out in your collective agreement. We suggest that you immediately contact your local team so that they can support you throughout this process.

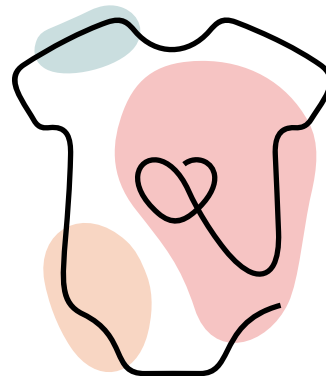
Q & A

The last time I was pregnant, I stopped working. Does that mean I'll immediately go on protective leave and stop working if I get pregnant again?

No, your employer is not required to remove you from the workplace. A work stoppage is granted only if the employer:

- is not able to eliminate at the source the hazards that are present in your workplace, as indicated in your certificate;
- is not able to adapt your position or change your duties;
- is not able to provide you with a work assignment involving duties that you are able to perform.

8- You can download the CNESST form to file a complaint after being penalized by the employer for exercising a right under Section 227 of the *Act respecting occupational health and safety* here: <https://www.cnesst.gouv.qc.ca/en/forms-and-publications/complaint-act-respecting-industrial-accidents>.



What should I do if I have more than one job?

You have to go through the same process for all positions or assignments with the same employer. If you have more than one employer, you must go through the same process of identifying risks and hazards, since these may differ from one job to another. Your employer may be able to reassign you to other duties that do not involve any danger for you or your unborn or breastfeeding child. However, this may not be the case for all of your positions or assignments.

Can my employer ask me to perform duties that aren't associated with my job title?

Yes. Your employer has an obligation to adapt your workspace or change your duties, but may assign new duties when that is not possible. You will retain all of the advantages associated with your original position or assignment, just as if you had never left it.

I have to leave work to breastfeed my baby during the day. Am I eligible for protective leave or reassignment for a breastfeeding worker?

No, because the program isn't meant to provide workplace flexibility or an adapted schedule. It's designed to eliminate hazards at the source that might involve risk for the infant.



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This pamphlet is provided for information purposes only and is not a legal document. To learn more about protective leave and reassignment for pregnant or breastfeeding workers, talk to [your local team](#). (apsq.com/en/my-union-office).