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WHAT YOU MUST KNOW BEFORE JOINING A PREVENTION MUTUAL GROUP

In December 1996, the National Assembly passed various amendments to the *Act respecting industrial accidents and occupational diseases*. These included the adoption of Article 284.2, which allows the creation of groupings of employers for the purposes of calculating the rates they must pay to the Commission de la santé et de la sécurité du travail (the "Occupational Health and Safety Commission" or "CSST"). These groups of employers are known as Prevention Mutual Groups ("PMG").

Since the adoption of Article 284.2 of the *Act respecting industrial accidents and occupational diseases*, many consultants, individually or in collaboration with professional firms, have set up projects or programs designed to group employers into Prevention Mutual Groups. In this bulletin, we seek to answer the main questions every employer should address before joining a Prevention Mutual Group.

WHAT IS A PREVENTION MUTUAL GROUP?

The CSST defines a Prevention Mutual Group as a "grouping of employers who have chosen to take steps to promote the prevention of work-related injuries and the rehabilitation and return to work of injured workers, in order that they may benefit from rates which reflect their efforts in these areas".

This initiative mainly targets small and medium-sized businesses (SMB), as employers insured under the

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retrospective plan, (generally very large companies), may not join a Prevention Mutual Group.

WHAT OBJECTIVES UNDERLY THE INTRODUCTION OF THIS NEW CONCEPT?

The CSST's main objectives in introducing Prevention Mutual Groups are as follows:

- to provide employers in the small and medium-sized business sector with the incentive to take concrete measures to improve the health and safety of their employees;
- to allow these employers to pay insurance premiums which reflect their performance in the area of occupational health and safety.

Indeed, until now, the assessment rate payable to the CSST by small and medium-sized businesses was mainly set according to the average experience of the companies in their respective sectors of activity. Individual performance was simply not taken into account. From now on, employers of a Prevention Mutual Group may benefit from a personalized rate which takes into consideration the occupational health and safety experience of all employers in the group.

WHAT ARE THE MAIN OBLIGATIONS OF PREVENTION MUTUAL GROUP MEMBERS?

Each employer-member must develop a prevention program in accordance with the *Act respecting occupational health and safety*, keep its program up-to-date and apply it in each of its establishments.

WHAT ARE THE OBLIGATIONS OF THE PREVENTION MUTUAL GROUP?

As a grouping of employers, the Prevention Mutual Group must report annually to the CSST on the means implemented to attain the objectives set, as well as on the results obtained. Furthermore, the Prevention Mutual Group must demonstrate a tangible effort to promote the prevention of work-related injuries, rehabilitation and the return to work of injured workers.

DOES PARTICIPATION IN A PREVENTION GROUP HAVE AN IMMEDIATE IMPACT ON THE PREMIUMS TO BE PAID TO THE CSST?

No. The effect of a grouping of employers as a Prevention Mutual Group will be spread over four years. Thus, the assessments of an employer who joins a PMG for 1998 will be adjusted when rates are set for the years 2000 to 2003. Exceptionally, for the Prevention Mutual Groups which are functional in 1998, their 1997 experience will be taken into account and the impact will be reflected as of the 1999 assessment.

DOES PARTICIPATION IN A PREVENTION MUTUAL GROUP AUTOMATICALLY ENTAIL A REDUCTION OF THE PREMIUMS PAYABLE TO THE CSST?

Not at all. The mere fact of joining a Prevention Mutual Group does not necessarily bring lower CSST assessments. In fact, if the group's performance is inferior to the average experience of companies in its sector of activity, the employer-member of such a group will see its assessment increase rather than diminish, due to the fact that its personalized rate will be higher than the

rate which would apply were the employer is not a member of the PMG (*i.e.* the unit rate).

HOW DOES ONE FORM A PREVENTION MUTUAL GROUP?

The CSST does not impose a rigid framework on the formation of a Prevention Mutual Group. The only constraints imposed by the CSST are the following:

- the sum of the annual assessments of each PMG member must exceed the minimum amount set for eligibility for the personalized rate plan (currently of approximately \$18,500);
- the employer-members of the Prevention Mutual Group must establish an appropriate mechanism for resolving conflicts which might arise within their group.

In addition, for the purposes of the CSST, a Prevention Mutual Group is formed by an agreement signed between each member of the Prevention Mutual Group and the CSST.

WHAT ARE THE OPERATING RULES FOR PREVENTION MUTUAL GROUPS?

No operating rules are provided in either the *Act respecting occupational health and safety*, or in the Regulations adopted thereunder. For example, the members of the PMG are entirely free to choose the juridical form of the group.

WHAT ARE THE ELEMENTS UPON WHICH THE MEMBERS GROUP SHOULD AGREE ON WHEN CREATING THE PREVENTION MUTUAL GROUP?

The most basic elements upon which the members of the PMG should agree are as follows:

- the juridical form of the group (corporation, association or other);
- the determination of the decision-making authorities in the Prevention Mutual Group (board of directors, committees, etc.);
- the nomination or voting procedures for the constitution of the decision-making authorities.
- the nature and scope of each member's obligations towards the other members and towards the Prevention Mutual Group itself.
- the method of financing the activities of the Prevention Mutual Group;
- the eligibility criteria of the membership in the Prevention Mutual Group;
- the expulsion procedures for delinquent members of the group;
- the mechanisms for resolving conflicts between members of the Group.

The lawyers of the Lavery, de Billy Labour Law Groups have extensive knowledge of Prevention Mutual Groups and are well equipped to advise you on their creation or to guide you through any existing Prevention Mutual Group project. In particular, our specialists in Business Law can advise you as to the juridical form which best meets the needs of the

Prevention Mutual Group and which is adapted to the nature of activities in its sector.

Furthermore, our firm does not participate in any way in "ready-made" PMG projects or programs. As such, we have the necessary independence to fully advise employers or any group of employers not only as to their rights and obligations as members of a Prevention Mutual Group, but also with regards to the consultants and

firms specializing in occupational health and safety who offer their services in the creation and management of Prevention Mutual Groups.

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