

Government of Québec proposes stricter French language law

KEY IMPACTS FOR EMPLOYERS



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Introduction

- **May 13, 2021:** presentation of *An Act Respecting French, the Official and Common Language of Québec* (the Act).
- Significant amendments to the *Charter of the French Language* (the Charter).
- New requirements and new risks for companies operating in Québec.

1. Offers of employment, transfer or promotion

- **Currently:** all job advertisements for Québec positions must be published in French.
 - Application forms in respect of those positions must also be made available in French.
 - Nevertheless, employers have significant latitude on how to do this.
- **Proposed change :** where an advertisement for a job is published in English, it would simultaneously have to be published in French “using transmission means of the same nature and reaching a target public of proportionally comparable size.”

1. Offers of employment, transfer or promotion (Continued)

- Consideration will have to be given to ensure the simultaneous publication of French and English versions of postings on comparable mediums.
- Consideration will have to be given as to how compliance with this new requirement is documented to avoid potential liability.

2. Contracts of employment

- **Currently:** contracts of employment must be in French for all Québec-based employees.
 - However, an employee can currently request that their contract of employment be drawn up in English or another language.
- **Proposed change:** if the employment contract is one of adhesion or if it contains or refers to standard clauses, a French version of the contract and/or the standard clauses would have to be presented to the employee **before the employee can request to have the employment agreement drawn up in English.**
 - Special care would have to be given to the accuracy of translations – the employee could be entitled to invoke either version in the event of a discrepancy.

2. Contracts of employment (Continued)

- Existing employees who have English contracts would be entitled to require that French versions be provided to them in the first year following the entry into force of the Act.

3. Written communications with Québec employees

- **Currently:** written communications to employees must be in French.
 - In reality, only communications relating to terms and conditions of employment are covered.
- **Proposed change:** employers shall “respect the worker’s right to carry on his activities in French” *in particular* through the use of French in written communications.
 - The scope of this requirement is not defined.

3. Written communications with Québec employees (Continued)

- We presume that the “use of French in written communications” would encompass **all “official” communications that emanate from the “employer”** (e.g., memorandums, notices, performance evaluations, improvement notices, pay increase/bonus letters).
- Documents relating to conditions of employment (e.g., policies) will continue to have to be made available in French.
- Training documents that currently do not have to be written in French (at least for employers with less than 50 employees in Québec) will have to be made available to Québec employees in French.

3. Written communications with Québec employees (Continued)

- Documents relating to employee benefits (e.g., pension plan texts, benefit policies and benefit handbooks, etc.) will continue to have to be made available in French.
- Québec employees will be entitled to receive group insurance contracts and insurance certificates in French.
- Existing documents that are not in French will **have to be made available in French one year after entry into force of the Act.**

4. Prohibited practices in respect of French-speaking employees

- **Currently:** employers are prohibited from dismissing, demoting or transferring unilingual French speakers on this basis.
 - It is also prohibited to sanction an employee for having requested compliance with the Charter.
- **Proposed change:** the prohibition would be extended to any form of reprisal or penalties in respect of unilingual French speakers in respect of:
 1. Deterring employees from exercising rights under the Charter;
 2. An employee not having sufficient knowledge of a language other than French, where the performance of his or her duties does not require it;
 3. Participating in francization committee meetings;

4. Prohibited practices in respect of French-speaking employees (Continued)

4. Attempting to influence the endorsement or not of a francization program;
5. Communicating with the *Office Québécois de la langue française* (OQLF) in respect of an alleged violation of the Charter, or collaborating with an OQLF investigation; and
6. Requiring an employee to acquire knowledge of a language other than French to keep a position or obtain a position, unless it can be demonstrated that the performance of the duties requires such knowledge, and that all reasonable means were taken to avoid imposing this requirement.

4. Prohibited practices in respect of French-speaking employees (Continued)

- The Act would require employers to take means to prevent discrimination or harassment of:
 - Employees who are unilingual francophones;
 - Employees who claim the right to express themselves in French; or
 - Employees who demand that their rights under the Charter be respected.

5. Stricter test for making knowledge of English a condition of employment

- **Currently:** knowledge of English can only be a condition of employment if it is operationally necessary.
- **Proposed change:** before making knowledge of English a condition of employment, the employer will be required to demonstrate that :
 1. An assessment of the actual language needs associated with the duties to be performed was carried out;
 2. Other employees who are already required to be proficient in English could not carry out the duties of the position that require the knowledge of English; and
 3. The duties requiring English proficiency have been concentrated as much as possible within certain positions, so as to restrict as much as possible the number of positions that require such proficiency.

6. Private rights of action and recourse

- **Currently:** a complaint to the OQLF is the only recourse for individuals, other than employees' rights to appear before the *Tribunal administratif du travail* (Administrative Labour Tribunal) in respect of a hiring, promotion or dismissal decision that is allegedly motivated by insufficient knowledge of a language other than French.
- **Proposed changes:**
 1. Individuals could seek **injunctive relief** in respect of a failure by an employer to honor their right to work in French;
 2. Any document that does not comply with the Charter could be deemed **unenforceable** as against the employee, but could at the same time be enforced as against employer; and
 3. English standard form contracts for which a French version was not presented would be deemed "**incomprehensible**" and null as a result.

6. Private rights of action and recourse (Continued)

- Enforcement of the provisions of the Charter governing employment relations would be placed exclusively in the hands of the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST).
 - Employees would be entitled to file complaints to the CNESST in respect of Charter violations
 - Those complaints could give rise to proceedings before the *Tribunal administratif du travail* (Administrative Labour Tribunal), where the employee could be entitled to free representation by a CNESST lawyer.
 - Where the complaint alleges discrimination, the CNESST would be entitled to transmit same to the *Commission des droits de la personne et des droits de la jeunesse* (human rights tribunal).

6. Private rights of action and recourse (Continued)

- The Act would create a new right under the Québec *Charter of Human Rights and Freedoms* to “live in French to the extent provided for in the *Charter of the French Language*”.
 - Individuals would then also have a right of action before the Courts in respect of Charter violations, which would include the right to claim **punitive damages** in instances of “unlawful and intentional interference”.
 - Such punitive damages **could be awarded in the absence of compensable harm.**

7. Employer Preparation and Risk Mitigation Strategies

- Gap analysis: Identify areas where existing practices are not compliant with new requirements.
 - Written “documentation”: contracts, policies, apps, etc.
 - Practices: Assessment of the actual language needs; concentration of English proficiency as much as possible within certain positions
- Prepare translated documents in user-friendly forms:
 - Offer letters/employment contracts: Consider preparing bilingual templates of standard agreements or clauses.
- Explore opportunities: Update contracts, policies or other documentation?

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