

# The Obligation to Maintain a Registration System or a Register Will Apply to Employees

September 01, 2015

Updated: Nearly a year after the publication of the draft Regulation to amend the Regulation respecting a registration system or the keeping of a register (the "Amending Regulation"), the amendment has yet to be published in the Gazette officielle du Québec. Under these circumstances, the Amending Regulation is still not in force as of this date. (September 23, 2016)

On September 2, 2015, the Government of Québec tabled a draft regulation, introduced by the Minister of Labour, Employment and Social Solidarity, Mr. Sam Hamad, which proposes to add to the employer's obligations to maintain a registration system or a register.

Although employers are already obliged to have a registration system or keep a register containing certain information with respect to their own employees, as well as their pay periods<sup>1</sup>, from now on, that same obligation will apply with respect to employees, if any, working in their enterprises who happen to come from a personnel agency.

The draft regulation, entitled Regulation to Amend the Regulation respecting a registration system or the keeping of a register (the "Regulation to Amend the Regulation") provides, by adding section 1.2 to the Regulation, that an employer that uses the services of employees hired from a third party in order to fill its personnel needs, shall indicate in its registration system or in its register certain information with respect to those employees, as well as with respect to the third parties in question.

More specifically, for each of the employees hired from a third party, the employer shall indicate in the registration system or the register, the employee's family name, first name, address, social insurance number, the identification of his or her employment and his or her starting date. The employer shall also add the following information, where applicable, for each pay period: the total number of hours of work per day, the total hours of work per week, the number of overtime hours paid or replaced by a leave, with the applicable rate increase, the number of days of work per week and/or the amount paid to the third party.

The draft Regulation essentially aims to have the rights of employees hired from personnel agencies respected, particularly by encouraging employers to retain the services of agencies respectful of employee rights. In this regard, one of the objectives sought is the elimination of "fly-by-night" agencies which close their doors without prior notice and without paying employees the remuneration due to them.

Henceforth, by virtue of the application of the new provisions of the Regulation, employers shall be required particularly to record in their registers all the hours worked **by every agency employee. In this way, the Commission des normes du travail (the "CNT") and the Commission de la santé et de la sécurité du travail (the "CSST")**<sup>2</sup>, in investigating any enterprise, will henceforth gain easier access to information relating to employees hired from personnel agencies.

As a result, it should be more obvious to the CNT and the CSST from now on to determine any amounts that may be due to them by an employer. That having been said, the new provisions of the Regulation do not give rise to any new responsibility for **the employer under either the Act respecting labour standards<sup>3</sup> (the "ALS") or the Act respecting industrial accidents and occupational diseases<sup>4</sup> (the "AIAOD"), but they might** simply facilitate applying certain existing sections of that legislation providing for the employer's responsibility under certain circumstances.

To that end, section 95 of the ALS provides that an employer shall be jointly and severally liable with a sub-contractor or an intermediary for the pecuniary obligations resulting from the application of the ALS or its Regulations, as well as for contributions due to the CNT.

A large and liberal interpretation of the concepts of sub-contractor and intermediary means that the employer who retains the services of an illegitimate personnel agency which, for example, has failed to pay its contributions to the CNT or has not paid the employees the minimum wage, would be jointly and severally liable, together with that agency, for the payment of the contributions or the salary due to the employees whose services it has retained. In the case of a personnel agency which has closed its doors without paying the employees, the employer would then be bound to pay salary to the employees whose services it has retained, since the agency would no longer exist.

In the same way, the employer may also be responsible for CSST assessments due by the agency, under section 316 of the AIAOD, which provides that "the Commission may demand payment of the assessment due by a contractor from the employer who retains his services"<sup>5</sup>.

Thus, these responsibilities of the employer, which we would remind you already exist, but which will be more rigorous in future, highlight the importance of always retaining the services of legitimate personnel agencies that respect the rights of employees.

In addition, these new provisions add to the employer's operational demands, in determining whether the human resources department or the finance department will be responsible for keeping the register of employees hired from third parties, as well as with respect to such third party. In fact, it is already the payroll department that already maintains the register required for the employer's own employees.

Just as with the registration system or the register that an employer is required to keep for each of its employees, the registration system or the register recording the employees hired from third parties and the third parties themselves, must be retained for a period of three (3) years<sup>6</sup>.

Any offence relating to maintaining a registration system or keeping a register may entail a fine from \$200 to \$500 for a first offence and, for subsequent offences, a fine of between \$500 and \$3,000<sup>7</sup>.

In the meantime, we will keep you updated on relevant developments regarding the adoption of this draft Regulation, as well as its coming into force, which should occur

within six (6) months following the date of its publication in the Gazette officielle du Québec, towards the spring of 2016<sup>8</sup>.

<sup>1</sup> Regulation respecting a registration system or the keeping of a register, c. N-1.1, r.6, section 1 (the "Regulation").

<sup>2</sup> At the same time, we would remind you that, effective as of January 1, 2016, the CNT and the CSST will be operating under the name of the Commission des normes, de l'équité, de la santé et de la sécurité du travail.

<sup>3</sup> ALS, R.S.Q., c. N-1.1.

<sup>4</sup> AIAOD, R.S.Q., c. A-3.001.

<sup>5</sup> AIAOD, section 316.; Industrie Pro-Pals Itée et C.S.S.T., 2008 QCCLP 4044.

<sup>6</sup> Regulation, section 2.

<sup>7</sup> Act respecting collective labour decrees, R.S.Q., c. D-2, sections 33 and 34.

<sup>8</sup> Section 2, Regulation to amend the Regulation.

By

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