Adoption of Bill 96 modifying the Charter of the French Language: Impacts on employers

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(Updated on June 9, 2022)

Bill 96, *An Act respecting French, the official and common language of Québec*, was assented to on June 1, 2022, a week after the National Assembly of Québec held its final vote to adopt it. It had been first introduced on May 13, 2021. Bill 96 makes several amendments to the *Charter of the French Language* (the Charter) and other laws such as the *Civil Code of Québec* and the *Consumer Protection Act*. This reform is the most significant since the adoption of the Charter in 1977.

On May 14 and 26, 2021, we had published two bulletins outlining the significant impacts of the first version of Bill 96, including on the workplace (see Linguistics 101: Our take on language reform in Québec's Bill 96 and Bill 96: What about the workplace?). Although the changes to the employment provisions are not significant, the Government of Québec adopted some amendments to Bill 96 following the committee stage.

This bulletin discusses the most important changes to the employment provisions of the Charter, so that employers can be aware of the main obligations that may affect the workplace. In addition to the changes discussed below, please note that employers with 25 to 49 employees in Québec will be subject to the same francization rules as those with 50 to 99 employees. Theses businesses will have to generalize the use of French across all levels of their enterprise. This requirement will come into force within three (3) years of the assent of Bill 96 and will affect the employer-employee dynamic. Its importance is significantly enhanced due to the new consequences imposed in the event of breaches. Please stay tuned for a future article on the francization process.

The amendments to the Charter outlined below came into force on the date of assent of Bill 96 (that is, on June 1, 2022).

Requirement	Description	Actions required
Language of labour relations (section 41 of the Charter)	Employers are required to respect the employees' right to carry on their activities in French	Translation in French of employment templates: offers of employment, transfer or

	and, more particularly, to provide in French the following documentation: • offer of employment, transfer or promotion; • individual employment contract; and • written communications during and after termination of employment with all or part of the staff, an employee in particular or an association of employees representing all or part of the staff. Employers are also required to make available the following documentation in French and, if also available in another language, that the French version be available on terms that are at least as favourable: • employment application forms; • documents relating to conditions of employment; and • training documents produced for the staff. Employers are required to first present to employees the French version of an individual employment contract that is a contract of adhesion (that is, a contract in which the essential stipulations were imposed or drawn up by the employer, on his behalf or upon his instructions, and were not negotiable – which represents most employment agreements provided by sophisticated organizations). If it is their express wish to obtain the employment contract in English (or another language), then	promotion, employment contracts, application forms, termination letters, etc. Translation in French of workplace policies, employee handbooks and training documents.

	employers may present them with the English version. Employers may communicate in writing with an employee exclusively in English (or another language) if they requested so.	
Filling a position (section 42 of the Charter)	If an offer to fill a position through recruitment, hiring, transfer or promotion is published in English (or another language), employers are required to publish this offer simultaneously and using transmission means of the same nature (that is, the same or a similar platform) and reaching a target public of a proportionally comparable size (reaching a pool of French-speaking candidates/applicants that is proportionally comparable to the pool of English-speaking candidates/applicants). Presumably, using platforms like LinkedIn for example would be admissible because such a service is available to all candidates/applicants in French and in English.	Translation in French of the offers to fill a position. Review of the platforms used for publication of offers to fill a position.
Collective and group agreements (section 43 of the Charter)	Collective agreements and the schedules to them must be drafted in French. Group agreements need not to be drafted in French like collective agreements, but must be made available in French as soon as they are entered into. A group agreement means an agreement other than a collective agreement that is entered into by an association or other body authorized by law to negotiate and that, by virtue of law, applies even to persons who are not members of that	Translation in French of the group agreements.

	association or other body.	
Prohibition of sanctions (section 45 of the Charter)	An employer is prohibited from dismissing, laying off, demoting or transferring an employee or taking reprisals against or imposing any other penalty on the employee for the sole reason that they are exclusively French-speaking or does not have sufficient knowledge of English (or another language) or for any of the following reasons: • The employee has demanded that a right arising from the language of labour relations provisions be respected; • To deter the employee from exercising such a right; • Because the employee does not have knowledge or a specific level of knowledge of English (or another language), where the performance of the duty does not require it; • Because the employee has taken part in meetings of, or carried out tasks for, a francization committee or a subcommittee created by that committee; • To induce an employee to endorse the program or documents or to dissuade them from doing so; or • Because the employee has, in good faith, communicated information to the Office de la langue française or cooperated in an investigation conducted	Review of language requirements in job postings and job descriptions (please see explanations underneath this table).

	because of such communication. The fact that an employer requires an employee or a candidate to have knowledge or a specific level of knowledge of English (or another language) to keep a position or to obtain a position, in particular through recruitment, hiring, transfer or promotion, is considered a prohibited practice unless the employer shows that the performance of the duty requires such knowledge and that they first took reasonable means to avoid imposing such a requirement.	
Prohibition of discrimination or harassment (section 45.1 of the Charter)	Every employee has a right to a work environment free of discrimination or harassment because the employee has no or little command of English (or another language), because the employee claims the possibility to express themselves in French or because the employee has demanded that a right arising from the language of labour relations provisions be respected. The employer must take reasonable means to prevent such conduct and, if such conduct is brought to the employer's attention, to make it cease.	Review of discrimination and harassment policy and training.
Prohibition of requirement (section 46 of the Charter)	An employer is prohibited from requiring an employee or a candidate, in order for them to be able to keep a position, or to obtain a position through, in particular, recruitment, hiring, transfer or promotion, to have knowledge or a specific level of knowledge of English (or another language), unless the nature of the duties requires such knowledge. Even when the	Review of language requirements in job postings and job descriptions (please see explanations underneath this table).

	nature of the duties requires such knowledge, the employer must first take all reasonable means to avoid imposing such a requirement. This prohibition applies not only at the moment of hiring, but also with respect to job retention.	
Reasonable means (section 46.1 of the Charter)	An employer is deemed not to have taken all reasonable means to avoid requiring knowledge or a specific level of knowledge of English (or another language) if, before requiring such knowledge or such a level of knowledge, one of the following conditions is not met: • The employer assessed the actual language needs associated with the duties to be performed; • The employer made sure that the language knowledge already required from other employees was insufficient for the performance of those duties; or • The employer restricted as much as possible the number of positions involving duties whose performance requires knowledge or a specific level of knowledge of English (or another language). Employers will be required to limit, to the extent possible, the number of employees who are required to master English (or another language) as part of their employment. The fact that a company is “international” may	Review of language requirements in job postings and job descriptions (please see explanations underneath this table).

	not suffice anymore to justify the requirement of English in all positions. However, taking those reasonable means should not impose an unreasonable reorganization of an employer's business.	
Victim of a prohibited practice (sections 47, 47.1, 47.2, 47.3, 47.4 and 47.5 of the Charter)	An employee or a candidate who believes they are a victim of a prohibited practice and who wishes to assert their rights may do so with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (the CNESST) within 45 days after the occurrence of the practice complained of. The CNESST may, with the agreement of the parties, appoint a person who has not already acted in the matter in question in another capacity to endeavour to settle the complaint to the satisfaction of the parties. Any verbal or written information gathered by the person appointed must remain confidential. If no settlement is reached after reception of the complaint by the CNESST, the complaint must be referred to the Administrative Labour Tribunal. The CNESST may represent a worker who is not a member of an association of workers.	N/A

Review of job postings and job descriptions

As for the review of language requirements in job postings and job descriptions, this constitutes the most significant impact of Bill 96 on the employment provisions of the Charter. In fact, before imposing the knowledge of another language than French as a job requirement in a job posting or description, employers must have taken all reasonable means to avoid imposing such a requirement.

Those reasonable means include assessing the actual language needs associated with the duties performed, the language knowledge already required from other employees and the number of positions involving duties whose performance requires knowledge or a specific knowledge of another language. Please note that although the Charter provides that those reasonable means should not impose an unreasonable reorganization of an employer's business, some reorganization is still expected.

Please also note that the requirement of the knowledge of another language than French as part of hiring or job retention is not the same as hiring or retaining employees who otherwise speak such other language without formally requiring it. Therefore, for example, employers could still hire or retain employees who speak English without having to take the reasonable means explained above.

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