New regulations for Québec's placement and recruitment agencies in force

February 04, 2020

On January 1, 2020, the provisions of the new *Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers* (the Regulation) came into force. Some provisions of the *Act respecting labour standards* (the Act) also came into force at the same time.

The final version of the Regulation, published on November 27, 2019, largely repeats the provisions of May 2019's original draft regulation, which we analyzed in detail at the time. Some of the most important changes coming from the Regulation are noted below.

Compulsory licensing and fees

Personnel placement agencies and temporary foreign worker recruitment agencies (an Agency) subject to the Regulation now need to be licensed. In order to continue operating legally in accordance with the Regulation, an Agency must apply for a license to the Commission des normes, de la santé et de la sécurité du travail (the CNESST) **no later than February 14, 2020**. If an application is made before then, the Agency can continue to operate until it hears from the CNESST. Any Agency that does not met the application deadline must stop operating until it has the required license.

Once a license is issued it is valid for two years, unless the CNESST revokes it. The Regulation also lays down conditions for the issuance, renewal and maintenance of the required licenses, including fees of $1,780 to get the license. Agencies must also provide a $15,000 security deposit to the CNESST to guarantee the performance of a judgment, in the event that the Agency or its client enterprises fail to pay their employees.

Businesses working with an Agency must ensure that the agencies they do business with are license holders, in accordance with the requirements of the Regulation. A list of license-holding agencies is available on the CNESST website.

Special requirements governing the operation of agencies

Apart from the obligation to obtain licenses and pay certain fees, the Regulation provides that agencies must comply with a certain number of requirements related to how they operate.

In particular, agencies may no longer agree to measures preventing or restricting the hiring of any of their employees by a client enterprise, for more than six months following the start of the employee working for a particular company. Moreover, agencies may no longer charge an employee for assigning them to a client enterprise, or for assistance or advice received in preparation for job interviews.

New labour standards now in force

The implementation of the new Regulation went hand-in-hand with new labour standards announced back in 2018[1] relating to employees of placement agencies and temporary foreign workers.

For example, the Act now provides that an employer who hires temporary foreign workers will have to inform the CNESST without delay of when they're arriving, the duration of their contract, and, if the departure date of the temporary foreign workers does not coincide with the end of their contract, the date and reasons for their departure.

In order to protect temporary foreign workers from certain abusive practices that happened in the past, employers hiring temporary foreign workers are now prohibited from charging them any fees for their recruitment, other than those authorized under a Canadian government immigration program, and from requiring temporary foreign workers to hand over to their employers any personal documents or property. The CNESST may institute legal proceedings on behalf of any temporary foreign worker if it has grounds to believe that their rights have not been respected, even if no complaint has been made by the worker.

There are also provisions in the Act prohibiting an Agency from paying an Agency employee less than that of an employee of a business performing the same tasks in the same place, if that wage disparity is based solely on his employment status (because he is paid by an Agency or because he ordinarily works less hours per week). In addition, the Act now explicitly says that agencies and the client enterprises of such agencies are liable for all monetary obligations resulting from the Act with respect to Agency employees.

The coming into force of the Regulation and of certain provisions of the Act will have a significant impact, not only on the activities carried out by agencies, but also on those of client enterprises doing business, occasionally or regularly, with agencies, particularly in a worker shortage situation such as that in Québec today. In order to avoid any problems of non-compliance, agencies and client enterprises should review the service contracts between them, as well as contracts in force between agencies and their employees, in order to make sure that they comply with the requirements of the Act and the Regulation. Our employment and immigration law professionals are available to assist you.

[1] In this regard, see our article "Significant Changes to the Act respecting labour standards", published on June 22, 2018.

By

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