

BILL 96: IMPACT ON EMPLOYERS WITH EMPLOYEES IN QUEBEC

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AGENDA

Topic	Speaker
1. Recent modifications to the Charter of the French language	Cédric Marsan-Lafond
2. Charter of the French language and remote workers	Cédric Marsan-Lafond
3. Francization process: how to register with the OQLF?	Olivier Lamoureux
4. Consequences of non-compliance	Olivier Lamoureux

RECENT MODIFICATIONS TO THE CHARTER OF THE FRENCH LANGUAGE

ORIGINS OF BILL 96

- **Origins of Bill 96 (Quebec Official and Common Language Act) :**
 - Passed by the National Assembly in June 2022 (78 votes for and **29 votes against**).
 - First major amendment to the Charter of the French Language since its adoption in 1977 (Bill 101).
- **Goal of Quebec legislators with respect to Quebec workplaces:**
 - Bill 96 aims to increase the use of the French language in Quebec workplaces, in particular by clarifying the requirements for written documentation and communication with employees.

BROAD IMPACT OF BILL 96

- **Public display and commercial advertising**
- **Trademarks**
- **Customer service**
- **Adhesion agreements**
- **Registration of security interests**
- **and more**

MAIN EMPLOYMENT AND LABOUR MODIFICATIONS INTRODUCED BY BILL 96

- Documents and written communications in French at work
- Communication and publication of job offers in French
- Prohibited practices related to the use of French by employees
- “Reasonable means” to avoid imposing knowledge of a language other than French
- Prohibition of discrimination related to the use of French

DOCUMENTS AND WRITTEN COMMUNICATIONS IN FRENCH AT WORK

- **Much broader scope of documents that must be available in French:**
 - Offers of employment, transfer or promotions;
 - Individual employment agreements (unless otherwise agreed upon by the parties);
 - For contracts of adhesion, the parties may be bound by the English version of the contract if that is their express wish, **but only after the employee has been presented with a French version of the contract.**
 - Any written communication to employees, **unless** the employees expressly request that the employer communicate with them in a language other than French.

DOCUMENTS AND WRITTEN COMMUNICATIONS IN FRENCH AT WORK

- **The following documents must now be available in French:**
 - Employment application forms
 - Documents related to conditions of employment
 - Training documents produced for the staff



POSTING OF JOB OFFERS IN FRENCH

- **When a job posting is made in a language other than French, the employer must:**
 - ensure that this job posting is also simultaneously posted/published in French;
 - as well as by means of transmission of the same nature and reaching a target audience of comparable size, all things considered.
- **Employers must justify the reasons why a position requires knowledge of a language other than French.**
- **These reasons must be stated in the job posting.**

FORBIDDEN PRACTICES

- **Employers are prohibited from dismissing, laying off, demoting or transferring a member of his staff or taking reprisals against or imposing any other penalty to an employee for the sole reason that:**
 - the employee speaks only French
 - the employee does not have sufficient knowledge of a language other than French
 - the employee has demanded that a right arising from the provisions of the Charter of the French Language be respected or to deter the employee from exercising such a right
 - the employee has participated in meetings or performed tasks for a francization committee.
- **Employers are prohibited from requiring a person to know a language other than French in order to keep or obtain a position unless:**
 - the performance of the person's duties requires knowledge of that language;
 - and the employer has taken all "reasonable means" to avoid imposing such a requirement.

« REASONABLE MEANS » : WHAT ARE THEY ?

- **The employer must take all reasonable steps to avoid requiring a person to know a language other than French in order to retain/obtain a position. To do so, the employer must first:**
 - assess the actual language needs associated with the duties to be performed;
 - make sure that the language knowledge already required from other staff members was insufficient for the performance of those duties; **and**
 - restrict as much as possible the number of positions involving duties whose performance requires knowledge or a specific level of knowledge of a language other than French.

« REASONABLE MEANS » : WHAT ARE THEY ?

- These requirements are **cumulative**, in that the employer will be deemed not to have taken all reasonable means if it fails to comply with any of them.
- These provisions must not be interpreted in a way that imposes on an employer an “unreasonable reorganization” of the company.



DISCRIMINATION

- **Every employee has the right to a work environment free from discrimination or harassment related to the fact that:**
 - the latter has no or little command of a language other than French;
 - the latter claims to the possibility to express himself in French;
 - the latter has demanded compliance with a provision of the Charter of the French Language.
- **Employers must take reasonable steps to prevent such conduct and, if it is brought to their attention, to make it cease.**

RECOURSES

- **An employee victim of a prohibited practice can file a complaint to the CNESST (i.e. Québec's labour board) in the 45 days following the alleged prohibited practice.**
- **An employee victim of discrimination/harassment related to the use of French, the lack of knowledge of a language other than French or to claiming a right arising from the Charter of the French language can file a complaint with the CNESST in the two years following the last incident of the offending behaviour.**

CHARTER OF THE FRENCH LANGUAGE AND REMOTE WORKERS

REMOTE WORKERS

- **Section 3118 of the *Civil code of Quebec* sets out the following general rule with regards to private international law applicable to employment agreements:**
 - When the parties have **designated the applicable law** in their employment agreement and the employee **habitually carries out his work in one jurisdiction**: the employee will still benefit from the mandatory provisions of the state where the employee habitually carries out his work.
 - When there is **no designation of the applicable law** in the employment agreement and the employee **habitually carries out his work in one jurisdiction** : the law of the state where the employee habitually carries out his work will apply.

REMOTE WORKERS

- **Section 89.1 of the Charter: “No provision of this Act may be interpreted in such a way as to prevent its application to any enterprise or employer carrying on its activities in Quebec.”**
- **The OQLF’s administrative position on this issue has recently evolved.**

FRANCIZATION PROCESS: HOW TO REGISTER WITH THE OQLF?

FRANCIZATION PROCESS

As of June 1st, 2022	As of June 1st, 2025
<ul style="list-style-type: none">Acceleration of the francization and registration process (reduced time to comply with the process)	<ul style="list-style-type: none">Reduction of the threshold from 50 employees to 25 employees regarding the requirement to register with the OQLF.
	<ul style="list-style-type: none">Employers with at least 25 employees over a period of 6 months or more will have to register with the OQLF and initiate the company's francization process.

FRANCIZATION PROCESS

- 1) Registration with the OQLF
- 2) Attestation of registration delivered by the OQLF
- 3) Transmission of the **analysis of the linguistic situation** in the company to the OQLF (**3 months**)
 - Involvement of the francization committee for companies with 100 employees or more
- 4) Implementation of a francization program
 - Powers of the OQLF to impose a program and the creation of a francization committee, if necessary
 - Ensure the widespread use of French in the company
- 5) Issuance of a francization certificate by the OQLF

FRANCIZATION PROCESS

Francization Committee

- 1) Meeting at least every 6 months
- 2) Provide the OQLF with the list of members of the francization committee and each subcommittee and any changes to this list
- 3) **New:** obligation to consult the OQLF before determining how committee members will be elected
- 4) **New:** minutes to be taken and distributed to members after each meeting
- 5) **New:** distribute the list of committee members to the company's employees

FRANCIZATION PROCESS

1) Composition of the francization committee

2) Responsibilities of the francization committee:

- analysis of the company's linguistic situation
- development of a francization program if the use of French is not already widespread in the company
- monitoring the application of the francization program
- preparation and drafting of a report on the implementation of the program (implementation report form)
- post-certification: 3-year report to the OQLF re sustainability of the measures implemented

CONSEQUENCES OF NON COMPLIANCE

SANCTIONS

- **Penal sanctions**

- Varies between \$3,000 to \$30,000 for corporations and from \$700 to \$7,000 for individuals;
- When an offence is committed by a director or an officer of a legal person, the fine is double that of the natural person for this offence;
- The fines are doubled for an additional offence and tripled for any subsequent offence;
- Offences that last more than one day are treated as separate offences (i.e. a new fine is imposed for each day)

SANCTIONS

- **Civil sanctions**

- The provisions of a contract that cause injury to a party by contravening the provisions of the Charter may be declared void on the application of the person who suffers the injury;
- A party that may apply for the annulment of a contract as per the above may also, if it prefers that the contract be maintained, apply for a reduction of its obligation equivalent to the damages the party would be justified in claiming;
- A court seized with an application as per the above may also make any other order it sees fit.



SANCTIONS

- **Administrative sanctions**

- The government may, after obtaining the opinion of the OQLF, suspend or revoke a permit or other authorization of the same nature if the enterprise that is the permit or authorization holder repeatedly contravenes the provisions of the Charter despite any order issued by the OQLF and despite any penal proceedings taken against the enterprise owing to such contraventions;
- The OQLF can publish a list of companies with regard to which it has refused to issue an attestation or whose attestation or certificate has been suspended or cancelled;
- The civil administration cannot enter into a contract or grant a subsidy to a company which must undergo the francization process that does not have a certificate of registration, that has not provided, within the time prescribed an analysis of its linguistic situation, that has no attestation of implementation of a francization program or francization certificate or if its name appears on the list of non-compliant companies.





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