

Bill 96 Amending The Charter Of The French Language: What Employers Need To Know



On June 1, 2022, in its drive to strengthen the status of the French language in Québec, the Government of Québec received royal assent to its Bill 96, the *Act respecting French, the official and common language of Québec*. This statute, which amends the *Charter of the French Language*, imposes new obligations on employers and most of those new obligations came into effect on June 1. Employers will therefore have to adapt their processes and practices in order to meet the new requirements.

Hiring

Job offers

While the requirement for bilingualism was common practice when posting a job offer in Québec, employers will now have to comply with new, stricter rules on the matter. Even though the previous law already required employers to demonstrate that the performance of tasks required knowledge of a language other than French, employers must now meet the following three conditions:

1. Conduct an assessment to determine the actual language requirements associated with the tasks to be performed
2. Make sure that the language skills of other staff members are insufficient to perform these tasks
3. Limit as much as possible the number of positions involving tasks that require a specific knowledge or level of knowledge of a language other than the official language

If any of these three conditions are not met, the employer will be “deemed not to have taken all reasonable means to avoid requiring knowledge or a specific level of knowledge of a language other than the official language.” That will constitute a prohibited practice leading to a possible recourse by “the victim.”

It is stipulated, however, that these obligations must not impose an unreasonable reorganization of the employer’s business.

The conditions also apply to promotions and transfers.

In addition, when knowledge of a language other than French is required in a job offer, the reasons for such requirement must be specified. The application form must

also be readily available in French.

Employment contracts

Previously, subject to the express wish of the parties, employment contracts could be drawn up in a language other than French. The practice was to insert a clause to that effect at the end of the contract.

Since Bill 96 has become law, in the case of contracts of adhesion (i.e., contracts in which all the essential clauses are imposed by the employer), the employer must first provide a French version of the contract so that the employee can read it and expressly agree to be bound by the English version. It should be noted that the employee must have easy access to documents and materials relating to working conditions in French.

Internal Communications

As of June 1, the employer must communicate with its employees in French. All internal written communications must be in French, including offers of training, transfer, promotion or employment. This obligation even extends to communications following termination of employment. However, an employee may ask to receive written communications in English.

Harassment and discrimination related to language

Also, as of June 1, 2022, employees have an explicit right to a workplace free of harassment or discrimination related to the use of French at work. Consequently, the employer has a duty of prevention and an obligation to take reasonable means to put a stop to behaviour that violates this right.

Francization process

It is important to remember that all companies with 50 or more employees are subject to francization rules and must, in general, use French at all levels of the company. Such companies must register with the Office québécois de la langue française and then conduct a language analysis. If the company demonstrates that French is in general use at all levels, the Office québécois de la langue française will issue the company a francization certificate. If not, the company must carry out a francization process by drawing up and following a francization program before it can obtain its certificate.

As of June 1, 2025, three years after the new law comes into effect, companies with 25 to 49 employees will also be subject to these same obligations.

In addition, companies with 25 or more employees will have to set up a committee responsible for analyzing and improving francization within the company if ordered to do so by the Office.

Sanctions

As of June 1, 2022, the government will no longer award contracts or grant subsidies to any company that violates the obligations set out in the *Charter of the French Language*.

The fines imposed on companies for violations of the law have also been substantially increased, ranging from \$3,000 to \$30,000 for a first offence, with each day of violation constituting a separate offence.

The directors of the offending company will be presumed liable for the offence, subject to a reasonable due diligence defence.

Conclusion

The amendments to the *Charter of the French Language* clearly require employers operating in Québec to make some changes. The requirement to demonstrate that all reasonable means have been taken to avoid requiring bilingualism as a condition for employment is certainly something to think about, and is likely to provoke debates before the courts.

As for private sector companies under federal jurisdiction in Québec, they will, of course, still be able to voluntarily comply with the obligations of the *Charter of the French Language*. Alternatively, Bill C-13, introducing the *Use of French in Federally Regulated Private Businesses Act*, which is in the process of being passed, will be the Federal Parliament's response to protect and promote the French language.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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