

NEW LINGUISTIC OBLIGATIONS FOR EMPLOYERS DOING BUSINESS IN QUÉBEC?

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Last February 12, the National Assembly unanimously decided to accept Bill 591: *An Act to amend the Charter of the French language to define the circumstances under which an employer may make knowledge of a language other than the official language a requirement for access to employment or a position* tabled by the Parti Québécois.

As its name shows, the Bill would amend the Charter of the French language (the “**Charter**”) to make a requirement of knowledge of a language other than French for access to employment or a position an exception.

To justify such a linguistic requirement, an employer shall show that:

- Participating in the regular activities related to the employment or position requires such a level of linguistic knowledge; and
- Performing the duties also requires such knowledge.

Moreover, if an employer claims that knowledge or a specific level of knowledge of a language other than the official language is required to perform the duties because exchanges with clients and suppliers generally take place in that language, the employer must show that he has organized his services so as to restrict, as much as possible, the number of positions to which this requirement applies.

Lastly, the Bill provides for the recourses which are currently available to any person who believes that he is a victim of an infringement of these obligations. A person who considers that he is a victim, whether or not he works for the employer, may request mediation with the assistance of the *Office québécois de la langue française*, and exercise a remedy before the Administrative Labour Tribunal or submit his grievance to arbitration within 30 days following the day on which the employer notified him of the linguistic requirements or the last relevant fact which establishes these requirements.

Remedies: ceasing the alleged act, resuming the staffing process for the employment, payment of an indemnity or punitive damages with interest.

Application Regarding an Employer's Obligations:

As it is currently in force, the Charter provides that French is the official language of work in Québec and that Quebecers have a basic right to work in French. The Charter provisions which concern the language of work are deemed to be part of every collective agreement and any stipulations in a collective agreement which are contrary to them are null and void.

All enterprises which do business in Québec are required to comply with the Charter and namely use French in all communications with their employees. In practice, such communications may be drawn up in another language as long as an equivalent version is provided in French or if the employee consents.

In addition, it is currently prohibited for an employer to require knowledge of language other than French for access to employment or a position, except if knowledge of that other language is required for the employment or position in question. Likewise, an employer is prohibited from dismissing, laying off, demoting or relocating an employee because he speaks only French, does not have sufficient knowledge of another language or demands that his right to work in French be respected.

If the Bill is enacted as it is currently drafted, this would create a practical obligation for an employer to show the necessity of a linguistic requirement, as well as creating an additional burden of evidence when this necessity results from discussion with customers or suppliers.

Because the Bill has just been tabled, the wording may still be changed as it winds its way through parliamentary commissions which will submit their detailed study reports before being enacted by the National Assembly and sanctioned by the Lieutenant Governor.

We will be closely monitoring the progress of this Bill and we will keep you posted on any changes. Lastly, it will be a pleasure for us to assist you with any issues regarding the Charter.

by Mireille Germain and Candice Hévin

A Cautionary Note

The content of this document is only a thumbnail sketch of the subject matter and shall not in any case be interpreted as legal advice. A reader must not use only this document to make a decision, but should rather contact his own legal advisers.

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