

## Bill 96: What about the workplace?

May 26, 2021

On May 13, 2021, the Government of Québec introduced Bill 96 to propose the adoption of An Act respecting French, the official and common language of Québec.

As outlined in our article [“Linguistics 101: Our take on language reform in Quebec's Bill 96”](#), the Act would have significant impacts in the workplace environment, especially since:

- Firms under federal jurisdiction would be required to comply with the provisions of the Charter of the French language (the Charter);
- Companies with 25 to 49 employees would now be subject to the same francization program as companies with 50 to 99 employees;
- The requirement to possess knowledge of a language other than French upon hiring would be more strictly regulated.

The following sections provide a detailed overview of the major changes announced by the government.

### Sections 46 and 46.1

One of the most significant amendments proposed is section 46 of the Charter.

Currently, the Charter states that an employer may not require a person to have knowledge or a specific level of knowledge of a language other than French to keep or to obtain a position, “unless the nature of the duty requires such knowledge”.

To date, this requirement has been interpreted in a relatively flexible manner by the courts.

However, Bill 96 proposes to amend the Charter so this prohibition against requiring a person to have knowledge or a specific level of knowledge of a language other than French unless the performance of the duty requires such knowledge applies not only at the time of hiring, but also with respect to job retention. The new section 46 provides the following:

An employer is prohibited from **requiring** a person, in order for the person 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 a language other than the official language, unless the nature of the duties requires such knowledge.

**In addition, section 46 of the Bill is supplemented by the insertion of section 46.1, which provides the following three conditions must be met before an employer can require knowledge or a specific level of knowledge of a language other than French:**

1. the employer assessed the actual language needs associated with the duties to be performed;
2. the employer made sure that the language knowledge already required from other staff members was insufficient for the performance of those duties;
3. the employer restricted 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 the official language.

At first glance, the second and third conditions may require a review of current practices in certain industries, given that they deviate from established case law.

## **Francization**

The Charter requires enterprises to adopt a francization program within their organization. Depending on the size of the enterprise, this program must be implemented through a francization committee set up by the employer, or at the request of the **Office québécois de la langue française (Office) following an unsatisfying analysis by the latter of the enterprise's linguistic situation following its registration with the Office.**

The francization program is intended to generalize the use of French at all levels of the enterprise. Including the use of French within the organization, amongst management and the board of directors, in the working documents and work tools, in policies for hiring, promotion and transfer, as well as in information technologies, etc.

Upon completion of the francization program, and if the Office considers that the use of French is generalized at all levels of the company, it issues a francization certificate attesting the enterprise complies with its obligations under the Charter.

As previously noted, the Bill would now extend the requirement to register with the Office to enterprises with more than 25 employees, subjecting them to an analysis of their linguistic situation and to the obligation to develop a francization program in the event that the Office considers its analysis unsatisfactory.

This enlargement of the scope of the obligations relating to the certificate of francization appears all the more important in light of the new consequences provided for by the Bill in the event of default by enterprises. Indeed, it is important to note that these consequences were previously rather limited and that the Legislator now wishes to increase them.

## Penalties

In addition to these considerations, the Bill reinforces the use of French as a language of business and work by preventing the civil administration from entering into contract with or granting a subsidy to enterprises with more than 25 employees, if they fail to comply with certain obligations set out in the Act.

Finally, in order to ensure compliance with the Charter, the Office will now be granted greater powers. According to the proposed provisions, the employer will have a period of at least 15 days following an inspection by the Office to comply with the Charter or to cease contravening it, failing which the Office may issue an order against the employer to that effect.

Furthermore, in order to enforce this order, the Office may apply to the Superior Court for an injunction to compel compliance.

Employers will need to respond promptly to any investigation or notice from the Office to avoid such an order to be issued against them.

## Conclusion

If adopted, Bill 96 will require a review of linguistic practices (and requirements) in many enterprises and, adjustments will be required in many cases, although the proposed amendments are not ground-breaking.

Not only will enterprises have to pay more attention to their francization process, they **will generally have to adopt stricter analysis and documentation processes before** requiring knowledge of a language other than French for a given position. Overall, the practical impacts of this rigorous process should not significantly impair the ability to recruit the required personnel, however the potential for litigation will be increased and additional attention will need to be paid to the issue in the coming years.

With over 40 years of experience in this area, our [Labour & Employment team](#) is prepared to assist you as you undertake the review of your linguistic policies. Should you have any questions on how these changes affect your business, please do not hesitate to contact us.

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