Québec Employers’ Update: Obligations Under the Charter of the French Language May Be About to Change

Article By
Ryan Martin
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
Our Insights

- Administrative & Regulatory
- Global
- Election Law / Legislative News
- Labor & Employment
- Quebec
- Canada

Friday, May 28, 2021

The Québec government recently proposed changes to the Charter of the French Language (also known as “Bill 101”) by presenting Bill 96, An Act Respecting French, the Official and Common Language of Québec, on May 12, 2021. The new bill notably aims to increase the use of French in workplaces and public spaces.

As a reminder, currently, Bill 101 declares that French is the official language of Québec. French is therefore to be “the normal and everyday language of work, instruction, communication, commerce and business.” Bill 101 currently applies only to provincial jurisdiction businesses operating within Québec. With respect to the workplace, Bill 101 requires that an employer address written communications to its
employees in French. In addition, an employer is prohibited from making the knowledge of a language other than French (e.g., English) a condition of the obtaining of employment, “unless the nature of the duties requires such knowledge.”

Bill 101 also imposes stringent requirements on businesses with 50 or more employees within the province. For example, a business that employs at least 50 employees for a period of at least six months must register with the Office québécois de la langue française (OQLF), which is in charge of ensuring compliance with Bill 101. Upon registering with the OQLF, the business will be required to complete an analysis of its linguistic situation (i.e. a detailed form describing the use of French in the workplace). The OQLF will analyze the business’s linguistic situation, and, if it is satisfied that “the use of French is generalized at all levels of the [business] …, it [will] issue a francization certificate.” If the OQLF does not come to this conclusion, it will notify the business that it must adopt a francization program to generalize the use of French in the workplace. Failing to comply with this provision or other provisions of Bill 101 could result in a fine of $1,500 to $20,000.

Finally, a business with 100 or more employees must form a francization committee tasked with analyzing the linguistic situation of the business and developing a francization program where necessary.

**Proposed Changes**

Bill 96 proposes numerous amendments to Bill 101 that will affect workplaces. Many of the changes merely spell out, more specifically, obligations that are already covered currently under sections 41, 45, and 46 of Bill 101. Highlights of the proposed changes include the following:

- A business with 25 or more employees will be required to obtain a francization certificate. (Previously, the law required a francization certificate for a business with at least 50 employees.)

- Bill 101 will be expanded to apply to federally regulated businesses. (While this important expansion would raise a jurisdictional issue, it apparently will not be challenged by the current federal government.)

- A business with at least 100 employees in Québec will now have to be represented at the OQLF not only by a management representative, but also by a representative of its employees.

- An employer will be required to “respect the worker’s right to carry on his [or her] activities in French,” regardless of the number of its employees in Québec. More particularly, the employer is required to:
  - publish any offer of employment, transfer, or promotion in French;
  - draw up any written individual employment contract in French;
  - “use French in written communications, even those after [the] termination of the employment relationship, with all or part of the staff, a worker in particular or an association of workers representing all or part of the
staff”; and

- make employment application forms, documents relating to conditions of employment, and training documents produced for staff available in French.

- Bill 101 requires employers to communicate in French when writing to a labour union (an association of workers representing all or part of the staff).

- An employer will be prohibited from dismissing, laying off, demoting, transferring or otherwise “taking reprisals against or imposing any other penalty on [an employee] for the sole reason that the [employee] is exclusively French-speaking or does not have sufficient knowledge of a given language other than [French] or for the following reasons”:
  - the employee has demanded that his or her right under the above protection be respected; or
  - the employee does not have sufficient knowledge of a language other than French, “where the performance of the duty does not require it.”

- It will be considered a prohibited practice to require proficiency in a language other than French unless the employer can show that the employee’s duties require such knowledge of another language and that the employer took all reasonable means to avoid imposing such a requirement.

- Businesses with five employees or more in Québec can be required by the OQLF to allow access to French language learning services for their employees.

**What the Proposed Changes Mean for Employers**

The changes proposed in Bill 96 will add obligations to federally regulated employers that used to be free from the requirements of Bill 101 and will impose additional obligations on employers already subject to Bill 101.

More specifically, employers in Québec with 25 or more employees may need to reassess their workplaces and ensure that the use of French is generalized at all levels.

Many of the proposed changes clarify existing obligations under Bill 101 or provide more specificity about what Bill 101 requires for employees. Therefore, the amendments in Bill 96 are unlikely to overburden employers that were up to par with their language law requirements.

*Ryan T. Smith is a law student, currently participating in the summer associate program in the Montréal office of Ogletree Deakins.*
