



BILL 96 & EMPLOYMENT OF ENGLISH SPEAKERS IN QUÉBEC

PROVINCIAL EMPLOYMENT ROUNDTABLE

INTRODUCTION



On May 24, 2022, Québec's National Assembly passed Bill 96, An Act Respecting French, the Official and Common Language of Québec. The bill, which presents significant modifications to The Charter of the French Language (Bill 101), as well as other existing legislation, was passed more than a year after it was introduced. On June 1, 2022, Bill 96 received royal assent and some of its clauses came into effect immediately. Other clauses of the bill will come into effect at later dates.

The bill sets out new measures to reaffirm French as the only official language of Québec and reinforce the prevalence of French in Québec society, government, businesses and workplaces. Many aspects of Bill 96 bear on the employment and employability of linguistic minorities in Québec.

This brief outlines key changes in Bill 96 that stand to impact employment and labour in Québec, particularly with regard to English speakers who face French-language barriers to finding and maintaining employment.

*This brief is intended to convey general information about Bill 96. It does not constitute legal advice and must not be treated or relied on as such.

KEY CHANGES



Hiring Practices

Employers will now be obligated to take reasonable means to avoid requiring employees to have knowledge of any language other than French. In this brief, we use English as an example of a language other than French, though it is worth noting that any non-French language would be affected.

When hiring new employees, employers must take reasonable means to avoid requiring the knowledge of English for the position. These are defined as:

1. Assessment of the actual language needs associated with the duties to be performed in the new position.
2. Ensuring that the English language knowledge possessed by current staff is insufficient for the performance of those duties.
3. Restriction of the number of positions involving duties whose performance requires knowledge of English or another language.

These measures came into force on June 1, 2022. However, Bill 96 stipulates that employers will not be required to conduct unreasonable reorganization of their business to meet these conditions. Therefore, some employers who can demonstrate that these hiring practices will require unreasonable reorganization may be exempt. Further clarification will be needed regarding what constitutes an unreasonable reorganization of business.

Language of Work

Bill 96 reinforces the goal of having French as the only language of work in Québec. It stipulates that within the workplace, employers must respect em-

ployees' rights to carry out their jobs in French. Additionally, employers must provide certain types of documents to employees in French.

The Charter already established that employers must provide communications to employees in French. However, Bill 96 adds further restrictions on the use of languages other than French by employers. Employment contracts, training documents and documents relating to employment conditions, and written communications to employees must be provided in French. If an employee specifically requests written communication in English, the employer can communicate in English.

These requirements came into force on June 1, 2022. For some aspects, such as employment contracts that were entered into before June 1, 2022 as well as training documents and work-related documents, employers will have an additional year (June 1, 2023) before they are required to provide a French translation.

Francization Requirements

Employers with 25 or more employees (previously 50 or more), will now be subject to francization requirements under the Charter. These include registering within 6 months with the Office québécois de la langue française (OQLF), which is the government body responsible for enforcement of the Charter. Additionally, employers must submit an analysis of the linguistic situation in the workplace within 3 months (previously 6 months) of registering with the OQLF. Employers will have until June 1, 2025, to meet these requirements.

Furthermore, under Bill 96, employers with 25 or more employees (previously 50 or more) may, at the behest of the OQLF, be compelled to form a francization committee. The Charter has previously

established that enterprises with 100 or more employees are unilaterally required to form a francization committee. These measures came into effect on June 1, 2022. Bill 96 also enables the OQLF to offer French-language learning services, through Francisation Québec, to enterprises with 5 or more employees. Enterprises that refuse the offer may be subject to sanctions. This will come into effect on June 1, 2023

Francization committees, introduced under the Charter, are composed of company staff and have several obligations, including meeting once every 6 months, designating their representative to the OQLF, reporting to the OQLF on the usage of French in the company, as well as developing and implementing a francization program for the workplace (where necessary). However, neither francization committees nor francization programs have the explicitly stated purpose of implementing French-language training in the workplace. The grace periods for companies to develop, implement, and report on francization programs have also been shortened.

Business Operations

Bill 96 strengthens the rules for businesses that offer goods and services in Québec to consumers and clients, and their obligations to serve them in French. This came into effect immediately on June 1, 2022.

Professional Orders

Under Bill 96, members of professional orders must maintain a knowledge of French suitable to the practice of their profession. Previously, individuals only had to demonstrate their knowledge of French (either through a French test or educational history) in order to become a member of a professional order.

Furthermore, Bill 96 stipulates that professional orders must communicate with future and current members exclusively in French. The bill does not specify whether this requirement will extend to the language of professional development trainings. Additionally, orders may now impose refresh-

er courses on members with the aim of enabling them to recover knowledge of French appropriate to their practice. Professional orders may also now require that a member obtain a certificate of knowledge of French issued by the OQLF if they deem a member's knowledge of French not appropriate to the practice of the profession. These requirements came into effect immediately on June 1, 2022.

Sanctions and Enforcement

Under the Charter, the OQLF was granted the power to investigate complaints related to the use of French in an enterprise. Bill 96 expands those powers to include the power to enter workplaces at any reasonable hour and collect evidence on the usage of French in the workplace.

Bill 96 also stipulates that employees can file complaints regarding the usage of French in the workplace to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST).

Companies' repeated contraventions of the Charter can result in suspension or the revocation of government permits and authorizations for businesses. Under Bil 96, fines for non-compliance have also been increased for first offences and subsequent offences. Additionally, each day that an offence occurs is counted and fined as a separate offence.

These measures came into effect immediately on June 1, 2022.



TIMELINE



June 1, 2022

- Restrictions on requiring a language other than French for new positions.
- Restrictions around language of work, including provision of employment contracts, training documents, and written communications in French (some exceptions apply).
- Possibility of imposition of a francization committee on enterprises with 25 or more employees; shortened reporting timelines for francization committees.
- Restrictions on businesses regarding increased use of French to serve consumers and clients.
- Requirement for members of professional orders to maintain knowledge of French; requirement for professional members to communicate with members and candidates in French.
- Increased sanctions, including increased fines and suspension or revocation of permits or authorizations.



June 1, 2023

- Restrictions around language of work, deadline for the translation of existing work-related documents into French.
- OQLF can require enterprises with 5 or more employees to implement French-language learning services through Francisation Québec.



June 1, 2025

- Imposition of francization measures on enterprises with 25 or more employees.

IMPACTS



Hiring of English Speakers and other Linguistic minorities

Under Bill 96, the usage of any language other than French in the workplace will further become a surveilled activity that is subject to fines prohibitive for most employers. A number of organizations have criticized the administrative and regulatory burdens that accompany the measures in Bill 96, and particularly their impact on small businesses with fewer resources to meet these requirements.¹

Employers will be under a greater regulatory burden to reduce the use of any language other than French in their operations, especially given the increased sanctions they face for non-compliance. This is likely to change the way they organize labour and negatively impact their ability to hire and maintain non-French-speaking employees or those deemed to not have a sufficient level of French-language proficiency. Given the higher rates of unemployment faced by English speakers as well as the French-language barriers faced by some, Bill 96 may further distance them from the labour market.

French-language Training for the Workplace

While most English speakers in Québec speak French, there remains a segment of English speakers who are deemed to not have adequate French-language skills to work in Québec. Québec currently has no comprehensive system of French-language learning services for those who want to learn French, especially in a workplace context. Instead, Québec's language learning framework is a patchwork of programs, with varying eligibility and costs, including barriers to access for

individuals who do not qualify for the francization programs for immigrants.² While Bill 96 stipulates that there will be future provision of French-language learning services to Quebecers unable to communicate in French, the bill does not guarantee that these services will be accessible to all individuals. Notably, the OQLF has been granted powers to impose French-language learning services on businesses with 5 or more employees.

Without language programs that allow individuals to learn French on the job, those who are deemed to have inadequate levels of French risk being excluded from Québec's labour market.

Regulated Professions

The new measures for professional orders further reinforce the usage of French in Québec's regulated professions but do not ensure access to quality French-language training for professionals in regulated professions. While many English-speaking professionals want to learn or improve their French-language proficiency, Bill 96 focuses on enforcement against those professionals who fail to adequately master French, including loss of their ability to practice their profession. This may make it more difficult for Québec to attract and retain professionals in key sectors, and worsen existing labour shortages in sectors such as healthcare and social services.

1. See, for example, Chamber of Commerce of Metropolitan Montreal. "Communauté d'affaires: un fort consensus pour la protection du français (in French only)," (2021, November 18). Retrieved from <https://www.cccm.ca/en/publications/viewpoints/communaute-d-affaires-fort-consensus-pour-la-protection-du-francais-french-only/>.

2. Provincial Employment Roundtable. "French-Language Training for the Workforce: A Review of French-language training programs for the workforce in Québec," (2022). Retrieved from <https://pertquebec.ca/wp-content/uploads/2022/04/FSL-Inventory-Assessment-Report.pdf>.

CONCLUSION



While Bill 96 has the commendable goal of protecting and promoting French in Québec, the bill also poses potentially adverse impacts on English-speaking Quebecers and their ability to find and maintain employment.

The expansion of requirements for businesses and employers to report on and enforce the usage of French in the workplace and with their customers could adversely impact the ways that employers make hiring decisions. In order to minimize their regulatory risk, employers may opt to prioritize hiring fluent French speakers over linguistic minorities or those they deem to not have an adequate mastery of French.

While the establishment of French-language learning services for all Quebecers will be welcome support for those seeking to improve their French, concerns remain that the other punitive measures in the bill could further distance some linguistic minorities from the labour market.



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