

BILL 96: HOW TO PREPARE YOUR BUSINESS TO FACE THE REFORM OF THE FRENCH LANGUAGE?

Adopted on May 24, 2022, Bill 96, *An Act respecting French, the official and common language of Quebec* (hereinafter "**Bill 96**") makes significant changes to the *Charter of the French language* (hereinafter after "**the Charter**") that affect not only government institutions, but also private enterprises with respect to labor relations and business language.

The purpose of Bill 96 is to affirm that the only official and common language of Quebec is French and, for that matter, the use, prioritization and protection of the French language must be respected in all areas where there are interactions with the public.

In the pages that follow, we will discuss the main changes that will most likely affect your business:

1. **The language of labour relations:** since June 1st, 2022
2. **The language of commerce and business**..... since June 1st, 2022
3. **Documents required in French** September 1st, 2022
4. **francization of enterprises employing 25 or more persons** June 1st, 2025
5. **Commercial advertising** June 1st, 2025
6. **Relations outside Quebec**
7. **Penal sanctions**

Items below come into force on June 1st, 2022, except for the rules regarding the documents that must be available and accessible in French, which come into force on June 1st, 2023.

1. THE LANGUAGE OF LABOUR RELATIONS

Bill 96 gives the employee a new right, which is the right to carry on his activities in French in the workplace. Therefore, to respect the worker's right to carry on his activities in French; the employer is now bound by new obligations

- Any offer of employment, transfer or promotion must be published in French on any company or recruitment platforms.
- Any individual employment contract the employer enters into in writing must be drafted in French if it is an adhesion contract (ex: contract between the employer and entry level employees – indeed, these contracts as referred to as adhesion contracts (like a contract with Hydro-Quebec or with MasterCard – because you cannot negotiate their content) or a contract that contains standard clauses. However, the parties may be bound by its version

in another language if, beforehand, they have read its French version and it is their express wish to be bound by its version in another language. Therefore, it will be very important to have a clause to confirm the employee's choice in the employment contract concluded in a language other than French. However, if it is an employment contract by mutual agreement, i.e. one which was negotiated by the employer and the employee, and which does not contain any standard clauses, the parties can then agree to conclude the contract in another language. Careful, if the employer does not respect Bill 96, the external clauses in such labor contracts cannot bind the employee on the basis that they will be deemed incomprehensible and unknown to the employee and if the latter claims to have suffered a prejudice, the employee can claim the nullity of the provisions that do not comply with the law.

- French must be the language used when the employer communicates in writing to all of its staff, to part of it, to a workers' association or to a particular worker. In the case of a particular worker, it is possible to make an exception if this particular worker has expressly requested to receive written communications in English and his employer agrees to do so. It should be noted that these communications also include those that take place after the employment relationship has ended. It should be noted however, that only written communications is covered by Bill 96, and as such, it does not apply to oral discussions. However, the use of French in oral conversations is a criterion that remains essential to assess the francization of a business, as will be discussed below.

Entry into force: June 1st, 2023

As of June 1st, 2023, the following documents must be available and accessible in French and their scope must be at least as favorable as their version in another language:

- employment application forms;
- documents relating to conditions of employment; and
- training documents produced for the staff.

Tip for employers: Make sure you always have a French version of the employment contracts on hand. If you have English and French speaking workers in your employ, make sure that all written communications are done either only in French or in both languages. With Bill 96, you are not prohibited from having an English version of the aforementioned documents, but rather you are required to always have a French version that accompanies them or that is available.

Another corollary of the right of the employee to work in a French workplace is the right to have a work environment free of discrimination or harassment related to the use of French or to claiming a right arising from the Charter. Indeed, an employer could be sued by the CNESST for a prohibited practice if he dismisses, demotes or retaliates against an employee for the sole reason that the latter avails himself of the right to work in French.

Under Bill 96, employers are not only prohibited from engaging in such a prohibited practice, but they must also be proactive and are required to take reasonable measures to prevent

discrimination and harassment against employees who avails themselves of a right of the Charter. This can be done by establishing internal policies or by adding a rule to this effect in the anti-harassment policies already in force.

Moreover, Bill 96 obliges employers to take reasonable steps to avoid imposing the requirement of knowledge of a language other than French to access or retain a position. Thus, this new obligation forces employers to verify within their company what is their real need to have bilingual workers, before requiring English from each new candidate for a position.

For example, an office where 50% of the clientele is English-speaking can require that, among its 6 support employees, 3 of them master English, but the employer cannot require that they all master it. The employer must carry out an internal redistribution of tasks and it is only if the 3 employees in question are unable to respond to the demand of work that requires a certain command of English, that he can then require this ability to access this position.

Tip for employers: Study your business market and draw up the job descriptions for each type of position that requires knowledge of English. Redistribute tasks accordingly among your employees. Keep in mind that nothing prevents you from hiring employees who happen to be bilingual, as long as this is not one of the determining criteria for a particular position, in which proof of the need for bilingualism has not been demonstrated.

Bill 96 establishes a presumption against the employer to the effect that he did not take all reasonable means to avoid requiring knowledge or a certain level of knowledge of a language other than French if, before making this requirement:

- he did not assess the actual linguistic needs associated with the tasks to be performed;
- he did not ensure that the language skills already required of other staff members were insufficient for the performance of these tasks; or
- he did not restrict as much as possible the number of positions that have tasks whose performance requires the knowledge or a specific level of knowledge of a language other than the official language.

Depending on the different situations, employees will have recourse to the CNESST or may have recourse to grievance arbitration if the Charter, as amended by Bill 96, is not respected.

Items below come into force on June 1st, 2022

2. THE LANGUAGE OF COMMERCE AND BUSINESS

Bill 96 gives the consumer of goods or services the right to be informed and served in French and the merchant is required to respect this right.

For enterprises that offer goods or services to non-consumers (i.e. to other enterprises) they must inform them and serve them in French.

Any document of a commercial nature (catalogues, brochures, order forms, etc.), regardless of its format (paper or electronic), which is intended for the public, must be available in French, and must be as much, if not more easily, accessible than its version in another language.

As with the employment contract, consumer contracts which include standard clauses or adhesion contracts must be written in French and the parties can only be bound by its English version after having read its French version and only if it is their express wish to be so bound by said English version. It is also only in this case that the documents relating to the contract can then be drawn up exclusively in English. For example, if an external clause is written only in English and the consumer contract in French, the external clause shall be deemed incomprehensible and will not bind the consumer. In addition, the consumer is presumed not to have been aware of such an external clause written in English.

It should be noted that the adherent who invokes that a contract does not respect Bill 96 and who claims that this breach causes him prejudice, may claim the nullity of non-conforming provisions. In such a case, the burden of proof rests on the other party to demonstrate that the adherent has not suffered any prejudice.

Tip for merchants: Make sure you have bilingual versions of your consumer or service contracts. Always give the consumer the French version of the contract by default and if a customer requests an English version, provide it to him afterwards. Your contract in English must now contain a clause stipulating that the consumer has himself asked to sign the contract in English and that he has previously read the French version of the said contract. Failure to comply with this new practice puts merchants at risk for complaints or penal sanctions.

Items below come into force on September 1st, 2022

3. DOCUMENTS REQUIRED IN FRENCH

With Bill 96, any written request submitted to an administrative authority by an enterprise must be made in French to obtain a permit, an authorization, a subsidy or financial assistance.

From September 1st, 2022, applications for registration of a security or any other right in the Register of personal and movable real rights (**RPMRR**) must be written exclusively in French, including any modification of a registration already published, even though it was originally done in English.

Also, as of September 1st, 2022, any application for registration before the Land registry office must be written exclusively in French. However, unlike the RPMRR, the Land registry office allows a deed that modifies or corrects another deed that was previously published in English, before the entry into force of Bill 96, to also be published in English.



Items below come into force on June 1st, 2025

4. FRANCIZATION OF ENTERPRISES EMPLOYING 25 OR MORE PERSONS

Bill 96 also provides that from now on, any business employing 25 or more persons for a period of 6 months must register with the *Office québécois de la langue française (OQLF)* within 6 months of the end of this period. Subsequently, the OQLF sends the enterprise a registration certificate and the enterprise is required to provide the OQLF with an analysis of its linguistic situation.

But above all, you need to know if your business is covered by this new obligation. In this regard, the notions of “enterprise” and “establishment” should not be confused. An enterprise is a legal entity created by its incorporation and the latter can have several establishments. Under Bill 96, it is the enterprise that is subject to the obligation to register with the OQLF and it will receive only a single certificate. Consequently, it is necessary to add the employees of all the establishments of the enterprise in order to determine if the threshold of 25 employees has been met. Moreover, the term “employees” includes full-time and part-time employees, seasonal workers, employees paid on commission and managerial personnel¹.

If the OQLF considers that the use of French is not generalized at all levels of the enterprise, the latter is required to form a francization committee. The mission of the committee will be to establish a francization program which must be sent to the OQLF within 3 months of receiving the notice from the OQLF.

The OQLF wants to ensure that francization programs meet the following objectives:

- the knowledge of the official language on the part of management, the members of the professional orders and the other members of the personnel;
- an increase, where necessary, at all levels of the enterprise, including the board of directors, in the number of persons having a good knowledge of the French language so as to generalize its use;
- the use of French as the language of work and as the language of internal communication;
- the use of French in the working documents of the enterprise, especially in manuals and catalogues;
- the use of French in communications with the government, clients, suppliers, the public and shareholders except, in the latter case, if the enterprise is a private issuer within the meaning of the *Securities Act*;
- the use of French terminology;
- the use of French in public signs and posters and commercial advertising;
- appropriate policies for hiring, promotion and employment transfers;
- the use of French in information technologies.

¹ <http://languedutravail.org/les-comites-de-francisation>

However, francization programs must also take into account the situation of persons who are near retirement or of persons who have long records of service with the enterprise, the business relationships of the enterprise outside of Quebec and the line of business of the enterprise.

Enterprises that, according to the OQLF, make general use of French at all levels of the company will be awarded a francization certificate.

It should be noted that enterprises employing more than 100 people are required to create a francization committee.

Please note that Bill 96 establishes consequences in the event of an enterprise's breach of its obligations related to the francization process. The names of enterprises to which the OQLF has refused to issue, suspended or annulled an attestation or certificate will be published on the OQLF website. These enterprises could be denied the possibility of signing contracts with the government and be denied receiving state subsidies.

Items below come into force on June 1st, 2025

5. COMMERCIAL ADVERTISING

Bill 96 strictly regulates commercial advertising. Indeed, any display, public sign or poster visible from outside a premise must appear clearly and predominantly in French. It is understood by this expression that the text written in French has a much greater visual impact than the text written in the other language. In this regard, it is deemed that the text written in French has a much greater visual impact if the following conditions are met:

- the space allotted to the text in French is at least twice as large as the space allotted to the text in the other language;
- the characters used in the text in French are at least twice as large as those used in the text in the other language; and
- the other characteristics of the sign or poster do not have the effect of reducing the visual impact of the text in French.

Consequences: Failure to comply with these new rules exposes you to penal sanctions and a court of law may order you to destroy or remove any non-compliant display at your expense.

6. RELATIONS OUTSIDE QUEBEC

What about your relationships outside the province of Quebec with customers or suppliers from another province or another country?

Bill 96 has as mission the promotion of French as the common language in Quebec, which includes the language of business. However, Bill 96 does not prevent the government or enterprises from using a language other than French when doing business outside of Quebec.

Business advice: Prioritize the use of French in your business relations with other Quebec companies. Make sure that your requirements to have a certain number of employees speaking a language other than French are proportional to your out-of-province activities.

7. PENALS SANCTIONS

Bill 96 is intended to be strict and increases the amounts per fine for breaches of the provisions of the Charter.

Any physical person who commits an offense is liable to a fine of 700 to \$7,000 and any enterprise risks fines ranging from \$3,000 to \$30,000 depending on the case.

The fines will be doubled for a first-time reoffender and tripled for subsequent reoffender. Moreover, when an offense continues for more than one day, it constitutes a separate offense for each day during which it continues.

HOW CAN WE HELP YOU?

These new obligations can lead to many fears and worries among enterprises, and it is understandable. Are your employment documents compliant? Are the English and French versions of your contracts equivalent? Has a dispute arisen with an employee who exercises a right provided for by the Charter or has a consumer filed a complaint against you? Our team is available to answer your questions, to help you understanding your new obligations and to assist you through all these changes.

