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Cross-Canada Labour & Employment update

WEBINAR SERIES
LEGAL UPDATES
FOR CANADIAN EMPLOYERS

DENTONS

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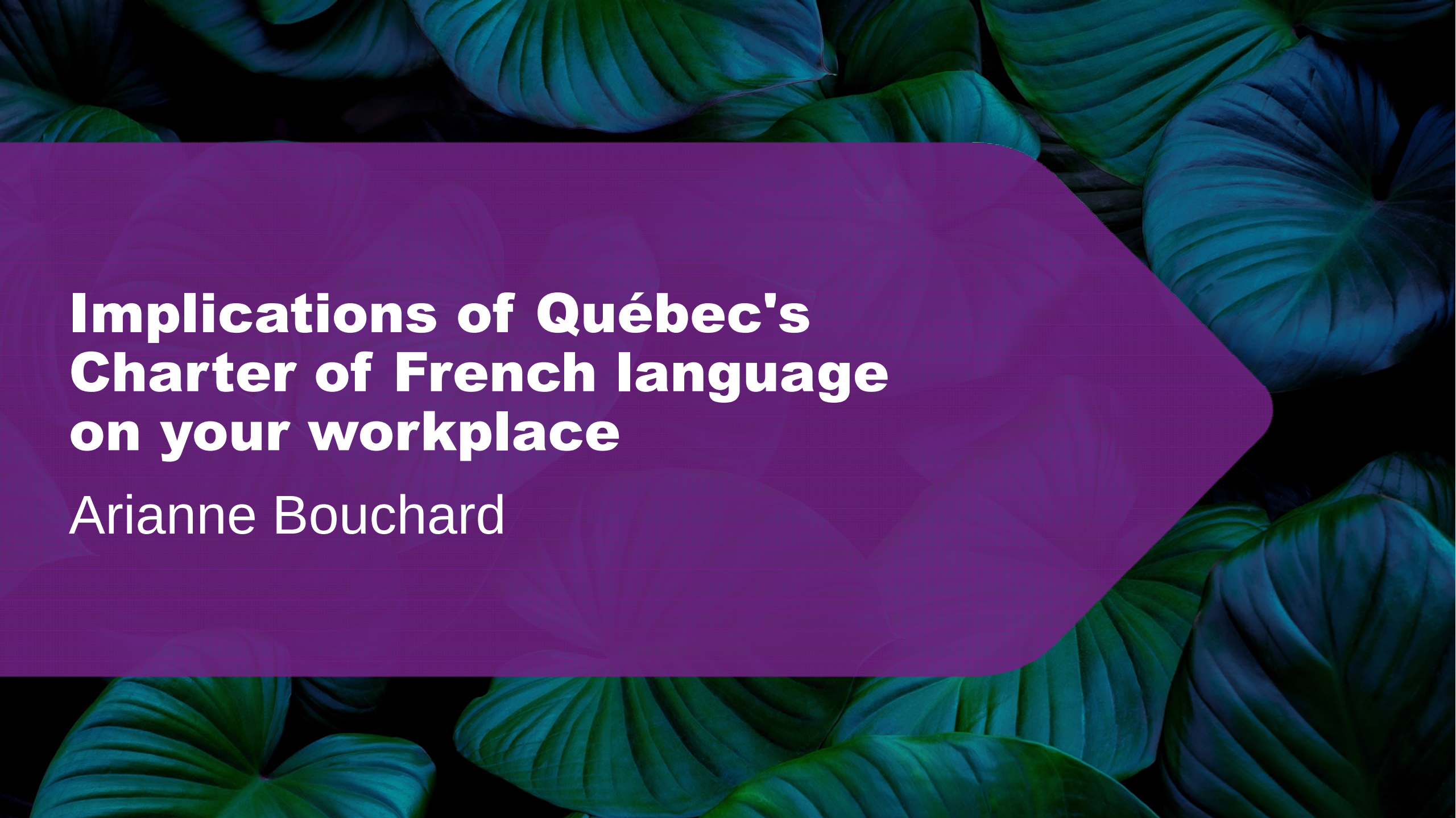

Implications of Québec's Charter of French language on your workplace

Arianne Bouchard

Introduction

- June 1, 2022, the *Act Respecting French, the Official and Common Language of Québec* (hereinafter the “**Bill 96**") received the royal assent.

- Bill 96 introduces several amendments to the *Charter of the French language* (the “**Charter**”), some of which impose new obligations on employers and strengthen the right of Quebec workers to carry out their activities in French.

- The amendments adopted will gradually come into force until 2025. However, most amendments pertaining to the language of work came into force on June 1, 2022.

Right to work in French

and the corresponding obligations of the employer

41. Every employer shall respect the worker's right to carry on his activities in French; therefore, the employer is required, in particular

(1) to see that any offer of employment, transfer or promotion the employer publishes is in French;

(2) to see that any individual employment contract the employer enters into in writing is drawn up in French;

(3) to use French in written communications, even those after 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

(4) to see that the documents below that the employer makes available are drawn up in French and, if also available in another language, see that the French version is available on terms that are at least as favourable:

(a) employment application forms;

(b) documents relating to conditions of employment; and

(c) training documents produced for the staff.

** **The above applies to all employers, regardless of how many workers they employ in Quebec** **

Job postings

- Prior to Bill 96, employers were already required to draft and publish offers of employment and promotion in French.

- This obligation now expressly extends to transfers.

- As before, job postings may be published in a language other than French. However, all employers must now ensure :
  1) that it is being published in French simultaneously;
  2) using the same means of transmission and reaching a target audience of comparable size.

- If the knowledge of a language other than French is required by the nature of the duties related to a position, the reasons justifying such requirement must be indicated in the job posting.

Individual employment contracts

- The general principle is that individual employment contracts are drafted in French.

- The parties may however express their wish to have such contract drafted in a language other than French.
  1) Adhesion individual employment contracts: the parties may express their wish to be bound exclusively by a version in a language other than French but only after having examined the French version.
  2) Negotiated individual employment contracts: the parties may express their wish to have the contract drafted exclusively in a language other than French.
- Employees who entered into an employment agreement in another language than French before June 1st, 2022 had until June 1st, 2023 to ask their employer to translate it in French.
  - No obligation to translate fixed-term employment contracts ending no later than June 1st, 2024.

Other employment related documents

- Application forms, documents related to working conditions and training documents made available to employees must be drafted in French. If available in another language, the French version must be available on terms that are at least as favorable to the other version.
  - For such documents that were available only in another language prior to June 1, 2022, employers had until June 1st, 2023 to make a French version available.

- Insurers are required to issue a copy of a group insurance policy in French to the client and to distribute insurance certificates in French to the employees. Same applies with respect to group annuity contracts.
  - Insurers had until June 1st, 2023 to translate into French a group insurance policy drafted in another language and entered into before June 1, 2022.
  - No obligation to translate policies expiring no later than June 1st, 2024. Same applies to group annuity contracts.

Written communications with employees

- Prior to Bill 96, written communications addressed by the employer to its staff were required to be in French.

- Now, written communications addressed to only part of its staff, to a particular employee or to an association of workers representing its employees must also be in French.
  - Also applies to written communications sent after the termination of employment.

- An employer may communicate in writing exclusively in a language other than French with an employee who requests it.
  - Tip : Request your employee what is their preferred language and keep a record

Requirement of the knowledge of a language other than French

- Prior to Bill 96, the knowledge of a language other than French could be required to obtain an employment or a position but only if required by the nature of the duties.

- Now, employers must, in addition, take all reasonable means to avoid imposing such a requirement.

- These restrictions on language requirements now apply to keeping a position as well as obtaining a position whether through recruitment, hiring, transfer or promotion.

Requirement of the knowledge of a language other than French

- To be considered having taken all such reasonable means, an employer must, before concluding that the knowledge of a language other than French is required :
    1) assess the actual language needs associated with the tasks to be performed;
    2) ensure that the language skills already required of other members of staff are insufficient for the performance of these tasks; and
    3) restrict as much as possible the number of positions to which are attached tasks whose accomplishment requires the knowledge of a language other than French.

- The employer who fails to meet all of those three conditions is deemed not to have taken all reasonable means to avoid such requirement.

- The Office québécois de la langue française (OQLF)’s position :
    - Contact with a language other than French isn't enough: the frequency and complexity of contacts must be considered.
    - Relationship with stakeholders in foreign countries is not sufficient to require all employees to know another language.
    - It's not enough to work in a specialized sector where most interactions are in English.

Protection against prohibited practices

- The protection against prohibited practices is now more extensive: employees may not be dismissed, laid off, demoted, transferred nor be the subject of retaliation or penalties:
  - for being exclusively French-speaking or lacking sufficient knowledge of a language other than French (if not required by the nature of the duties of the position);
  - for demanding that a right with respect to the language of work be respected or to deter from exercising such a right;
  - to induce or dissuade from endorsing a document in relation with the francization committee;
  - for having participated in a francization committee; or
  - for having communicated information to the Quebec Office of French Language (the "**Office**").

- Someone who believes having been the victim of a prohibited practice may file a complaint with the CNESST. If unsettled, the complaint may be referred to the Administrative Labour Tribunal for a decision to be rendered.

- Unionized employees may file a grievance.

Protection against discrimination and harassment

- Employees are now protected against discrimination and harassment:
  - for having no or little knowledge of a language other than French;
  - for wanting to express themselves in French; or
  - for demanding that a right with respect to the language of work be respected.

- Employers have the corollary obligation to take reasonable steps to prevent such discrimination or harassment and make it cease when they become aware of it.

- Employees who believe they are the victim of harassment or discrimination may file a complaint with the CNESST which will be dealt with in accordance with the provision of an *Act respecting labour standards* related to harassment.

- If unsettled, the complaint may be referred to the Administrative Labour Tribunal for a decision to be rendered.

- Unionized employees may file a grievance.

Sanctions for non-compliance

New civil sanctions and administrative penalties

- Subject to some exceptions, the victim of a violation of the fundamental right of workers to carry out their activities in French may obtain the cessation of such violation.
- The person suffering a damage resulting from the provision of a contract, decision or other act in violation of the Charter may seek the nullity of such provision or the reduction of his or her obligation.
- A company that repeatedly violates the Charter may have its governmental permit or other authorizations suspended or revoked.

Stronger penal provisions

- Potential fines for a violation of the Charter have been increased ($3,000 to $30,000 for companies).
- New offence for the disclosure of false or misleading information or for retaliation in the context of a disclosure to or investigation by the Office.
- Fines are doubled for a second offence and now tripled for subsequent offences. Fines for a natural person are also doubled when the offence is committed by a director or officer of a legal person.
- An offence that continues for longer than one day now constitutes a separate offence for each day it continues.

Francization of entreprises

Additional rules for larger businesses

- Companies employing more than 50 people in Québec also have the obligation to take steps to ensure that the use of French is generalized at all levels of the enterprise, including :
    1. amongst the employees, including the company's senior officers, the managers and the professional;
    2. board of directors;
    3. use of French as the language of work and as the language of internal communication;
    4. use of French in the work documents and tools used in the enterprise (e.g. softwares, manuals);
    5. use of French in communications with the civil administration, clients, suppliers, the public and shareholders
    6. use of French terminology;
    7. use of French in public signs and posters and commercial advertising;
    8. appropriate policies for hiring, promotion and transfer;

- As of June 1, 2025, threshold will be lowered to 25 employees.

Francization of entreprises

- **Registration with the OQLF:** Within six months of the end of the first consecutive six-month period in which the employer employs at least 50 people
- Certificate of registration issued by the OQLF
- **Analysis of linguistic situation**: within three months of the issuance of the certificate of registration
  - Request for francization program
  - Submission of program to the OQLF: within 3 months of the request
  - Approval of francization program
  - Application of francization program
  - Yearly status report
- **Certification**
- **Maintenance of francization**
  - Three-year status report
  - Action plan

Francization Committees

- Mandatory for all companies with at least 100 employees in Québec
  - At least six members, including at least three representing the employees

- The OQLF may also require that any companies employing between 25 and 99 employees creates such committee
  - In this case, the number of members is decided by the OQLF (between 4 and 6)

- Committee must meet at least once every six months
  - Without loss of pay for the employees participating to such committee

- Minutes of every meetings, signed by all members of the committee, shall be sent to the OQLF

Francization Committees

- Until the issuance of the francization certificate
  - Draft the company's linguistic situation analysis
  - Elaborate the francization program to be adopted by the company (if required), and monitor its implementation;
  - Draft the annual report(s) on implementation of the francization program.

- After the issuance of the francization certificate
  - Ensure that the use of French remains widespread within the company;
  - Complete a report every three years on the evolution of the use of French within the company

- At all times :
  - At the request of the management, the committee may also advise on the employer's practice of requiring a person to have knowledge o of a language other than French and on the means taken to avoid imposing such a requirement.
  - Participate in activities aimed at informing staff of the implementation of any francization program or of developments in the use of French within the company.

What employers need to know about hiring a temporary foreign worker under the International Mobility Program

Heelan Kwon

Hiring a temporary foreign worker (TFW)

Work authorization

Immigration and Refugee Protection Act (S.C. 2001, c. 27)

> 124(1) Every person commits an offence who
>
> …
>
> (c) employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed.

Determine whether the foreign national candidate possesses the necessary authorization to work for the employer in the proposed occupation:

→ If the employer determines that the foreign national candidate already has this authorization, then it can proceed with hiring

→ If the employer determines that the foreign national candidate is not authorized to work, then it can choose to support the candidate in obtaining a work permit

Hiring a temporary foreign worker (TFW)

Supporting a work permit application

A) Temporary Foreign Worker Program

- Addresses temporary labour needs that cannot be locally met
- Led by Employment and Social Development Canada (ESDC); jointly administered with Immigration, Refugees and Citizenship Canada (IRCC)
- Employer must obtain a Labour Market Impact Assessment (LMIA) from ESDC before the TFW can apply for a work permit

B) International Mobility Program

- Supports the broader economic, social, and cultural interests of Canada
- Led by IRCC
- LMIA-exempt; only a work permit application is required

International Mobility Program (IMP)

Work permit categories

- Open vs closed (i.e., employer-sponsored) work permits
- Common LMIA-exemptions/closed work permit categories include:
  - **Intra-company transferees**, which involves the transfer of a foreign national employee from a company outside of Canada to a related entity in Canada.
  - **Professional work permits under international agreements/arrangements**, such as the *Canada-United States-Mexico Agreement* (CUSMA, previously the NAFTA), which involves the hiring of a TFW in a professional occupation (which must appear in the CUSMA), and the TFW possesses the necessary credentials for that occupation.

International Mobility Program (IMP)

Supporting a work permit application under the IMP

Subject to the eligibility criteria for each work permit category, employer support generally involves:

- Providing a detailed supporting letter including specific information regarding:
  - The employer entity
  - The proposed position/assignment in Canada
  - How the requirements of the work permit category are met.
  - Terms of employment.
- Providing supporting documents in accordance with the work permit category requirements
  - E.g., in the case of an intracompany transferee work permit, the employer will need to supply documentation establishing that the Canadian entity and the TFW's employer outside of Canada have a qualifying corporate relationship.
- An Offer of Employment filing

International Mobility Program (IMP)

Offer of Employment

- What is an “Offer of Employment”? → Online regulatory filing submitted through an employer’s registered portal account (Employer Portal).

- This filing collects information about:
  - The employer entity
  - The TFW
  - The proposed position (e.g., position title, occupation code, duties, education/experience requirements, place of employment, etc.)
  - Terms of employment (e.g., salary/hourly wage, hours of work per day/week/month, vacation, benefits entitlements, etc.)

International Mobility Program (IMP)

Employer compliance

- ESDC and IRCC partner to conduct compliance inspections of employers using the IMP and TFWP
- The primary purpose of an inspection under the IMP is to verify the employer’s compliance with the terms of the Offer of Employment
- Employers may be chosen for a targeted or random inspection for up to six years after the TFW has started working
- Consequences of non-compliance for employers can be severe, ranging from fines and revocation of work authorization, to being blacklisted and permanently banned from using the IMP and TFWP

International Mobility Program (IMP)

New employer obligations

1) Employers must make reasonable efforts to provide access to health care services when the TFW is injured or becomes ill at the workplace;

2) Employers and recruiters are prohibited from charging or recovering fees (directly or indirectly) from the TFW relating to the employer compliance fee or any other fees relating to the recruitment of the TFW;

3) On or before the first day of work, employers must provide the TFW with a copy (in English or French, as chosen by the TFW) of the most recent information with respect to the TFW's rights in Canada that is made available by the Government of Canada for that purpose; and

International Mobility Program (IMP)

New employer obligations cont'd

4) Employers must provide an attestation that:

- The employer has entered into an employment agreement with the TFW which
    - •Provides for employment in the same occupation and the same wages and working conditions as those set out in the Offer of Employment,
    - •Is drafted in English or French (as chosen by the TFW), and
    - •Is signed by both the employer and the TFW;
- The employer has provided a copy of the above employment agreement to the TFW; and
- The employer and any person who recruited the TFW have not charged or recovered fees (directly or indirectly) from the TFW relating to the employer compliance fee or any other fees relating to the recruitment of the foreign national.

The latest on the new British Columbia Pay Transparency Law

Victoria Merritt

Pay history & pay secrecy

Effective May 11, 2023

- Employers cannot seek pay history information about job applicants “by any means”. Employers cannot ask applicants about their pay history, or seek this information from other parties, unless this information is publicly accessible.

- Employers must not dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or threaten to do so, because the employee:
  - Asks about their pay;
  - Discloses information about their pay to another employee or job applicant;
  - Asks about a pay transparency report or information in a report;
  - Asks the employer to comply with the employer’s obligations in the *Pay Transparency Act;* or
  - Gives information to the Director of Pay Transparency in relation to the employer’s compliance with the employer’s obligations under the *Pay Transparency Act*.

Job posting requirements

Effective November 1, 2023

- Employers in BC must include the expected salary/wage (or salary/wage range) for any publicly advertised job opportunities.
  - Includes job postings by employer or on behalf of employer by third parties
  - Includes job postings in non-BC jurisdictions, if position open to BC residents
  - Excludes non-public postings (i.e., internal postings)
  - Excludes non-specific job postings (i.e., “help wanted” or general recruitment campaigns)

- Wage or salary information?
  - Employer’s reasonable expectation of pay for the job at the time of posting
  - Employee can negotiate (and employer can agree) to pay more
  - Does not have to include overtime, tips, benefits, etc.
  - If a range, must not include unspecified minimum or maximum (i.e., up to $50,000)
  - Size of range unrestricted (for now)

Reporting requirements

Staged implementation starting November 1, 2024*

- Reporting requirements
  - Reporting employers will be required to prepare annual pay transparency report by November 1 each year
  - Report to be distributed to all employees and published on a publicly accessible website
  - Report to include information about the employer, composition of workforce, differences in pay in relation to employees' self identified gender and other characteristics, and any other information required by regulations (details are still being developed)

- Reporting introduced in stages – large employers first
  - 2023: Government of BC and six Crown Corporations
  - 2024: 1,000 employees +
  - 2025: 300 employees +
  - 2026: 50 employees +
  - After 2026: more than the lesser of 49 and any prescribed number

Enforcement

Director of Pay Transparency

- Director of Pay Transparency
  - Supports employers in complying with pay transparency obligations
  - Receives reports of non-compliance by employers
  - Other prescribed responsibilities

- Prohibition in BC's *Human Rights Code:* employers cannot discriminate in wages between similarly positioned employees based on sex.

- Section 12 of the Act confirms that Section 5 of BC's *Offence Act* does not apply

Other aspects of the Act

(and what comes next)

- Consultation & Cooperation with Indigenous Peoples
  - Director of Pay Transparency must notify Indigenous governing entities where their rights or interests could be affected by the publication of a government report
- Review of Act
  - 5-years from coming into force
  - Written review of the effectiveness of the Act and its regulations
  - May include recommendations to improve the effectiveness of the Act
- Regulations?
  - Excepting things from definition of “pay”
  - Exemptions from reporting requirements for certain employers
  - Including additional posting requirements
  - Details on reporting requirements
  - Including other responsibilities of the Director of Pay Transparency

Employee termination update: Upcoming changes to federal termination notice periods

Larysa Workewych

What is the current law under the *Canada Labour Code*?

- Federal termination landscape is divided between two groups of employees: employees entitled to the protections of the unjust dismissal scheme, and employees that are not entitled to such protections
  - Unjust dismissal provisions replace the common law right of employers to dismiss without cause by providing reasonable notice

- Protection does not apply to the following employees:
  - Employees who have less than 12 months of continuous employment
  - Managerial employees
  - Employees laid off because of lack of work or discontinuance of a function
  - Employees who have available to them an alternate procedure for redress under Part I or Part II of the *Canada Labour Code* (e.g. under a collective agreement)

What is the current law under the *Canada Labour Code*?

- Employees that do not have unjust dismissal protection are instead entitled to prescribed minimum notice and severance pay entitlements
  - **Individual Notice of Termination:** Employees who have completed 3 or more continuous months of employment are entitled to 2 weeks of notice of termination or pay in lieu of notice (unless the employer has just cause to terminate the employment relationship)
  - **Severance Pay:** Employees who have completed 12 or more continuous months of employment are entitled to severance pay equivalent to the greater of 2 days wages for each completed year of employment, and 5 days
  - **Group Notice of Termination:** In the context of a group termination, employers must notify employees of their intention to terminate the employment relationship at least 16 weeks in advance (in addition to the 2 week notice entitlement) and must provide employees with a statement of benefits as soon as possible but no later than 2 weeks before the termination of the employee's employment

How is the law changing?

Increased individual notice entitlements

- Employers will have to provide employees with increased individual notice of termination
  - o Graduated notice entitlements (aligning entitlements with provincial and territorial termination schemes)

Completed continuous service	Minimum notice entitlement
3 months	2 weeks
3 years	3 weeks
4 years	4 weeks
5 years	5 weeks
6 years	6 weeks
7 years	7 weeks
8+ years	8 weeks

What else is changing?

Expanded obligation to provide statement of benefits

- All employees will be entitled to a written statement of benefits upon termination of employment (not just those dismissed as part of a group termination)
- Must set out:
  - Vacation benefits
  - Wages
  - Severance pay
  - Any other benefits and pay arising from the employee's employment
- Deadline for providing this statement varies depending on how the employment relationship ends:
  - If the employee receives working notice of termination, statement must be provided as soon as possible but no later than 2 weeks before the date of termination
  - If the employee receives pay in lieu of notice of termination, statement must be delivered no later than the date of termination
  - If the employee receives a combination of working notice and pay in lieu, statement must be provided as soon as possible but no later than 2 weeks before the date of termination or, if the period is shorted, the day on which notice is given to the employee

What do employers need to know?

- For employees with less than 3 years of service, entitlements are not changing
- Statutory severance entitlements are not changing
- Unjust dismissal scheme and protections are not changing
  - Increased notice entitlements will not impact most terminations, only those that involve employees who are exempt from the unjust dismissal protections
- Group termination entitlements are not changing
- Changes come into force on **February 1, 2024**
  - Review current employment contracts to confirm language complies with the amended statutory minimum entitlements

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