

Policy Matters Blog 8 – Bill 96

COMMITTEE EXAMINES RULES FOR POSTING BILINGUAL POSITIONS

February 17, 2022 –The provincial [Committee on Culture and Education](#) yesterday continued its clause-by-clause reading of [Bill 96, An Act respecting French, the Official and Common Language of Québec](#), with clauses 35 and 36 of the bill. This section modifies Art. 46 of the [Charter of the French Language](#). It also adds a new article, 46.1, relating to positions designated as “bilingual” within any organization (both public and private).

This section of the bill clarifies the “necessity” requirement for employers seeking to hire for a position determined to be bilingual. Under the modified Charter, employers will only be permitted to designate a position as bilingual if they first complete a three-step analysis:

- (1) they must ensure that knowledge of another language is necessary for the position;
- (2) they must make sure that current employees with knowledge of another language cannot fulfill the tasks in that other language for the new position;
and
- (3) they must restrict the number of positions within their organization that require knowledge of another language.

Debate on this section was quite lengthy. Opposition MNAs proposed several amendments.

First, Québec Solidaire MNA Ruba Ghazal proposed an amendment that would require employers to explain within the job posting itself why that position requires knowledge of another language. This was commented on favourably by both Coalition Avenir Québec (CAQ) and Parti Libéral du Québec (PLQ) members. This amendment was approved.

Second, Liberal MNA Hélène David questioned the use of the word “task” (tâche) rather than “position” (poste) within the second requirement. Language Minister Simon Jolin-Barrette explained that this was meant to represent specific tasks within a position that may require knowledge of another language. The word can also refer to multiple tasks that may need to be redistributed to other employees. No amendment was proposed on this point.

Third, Liberal MNA David Birnbaum raised a point regarding institutions that are designated as bilingual (certain municipalities, health institutions, etc.). He

proposed that these be excluded from this section of the bill, given that the nature of their operations requires that they hire employees with knowledge of English. Government representatives disagreed. They explained that even under the previous law, these institutions were not exempted. They added that within bilingual institutions, it may still be possible for positions to exist that do not require the employee to speak a language other than French. An example was cited: custodial work. This point was not taken further.

Fourth, regarding the new Art. 46.1 of the Charter, MNA David proposed an amendment to change the word “réputé” to “présumé” to allow leeway where employers do not conform to the law. In other words, her amendment was meant to allow employers to present evidence to rebut an assertion that they did not take reasonable measures before requesting that a position be designated bilingual. Her amendment was rejected. However, the government presented an amendment adding a paragraph which loosely translates as follows: nothing in this section should be interpreted as requiring employers to carry out an unreasonable reorganization of their business. This amendment did not appear to satisfy Liberal representatives. However, it was adopted.

Finally, MNA Ghazal pointed to a current government program that allows derogation of the requirement to speak French at work in certain industries (notably in information technology, innovation, and artificial intelligence) in order to attract foreign workers in this field. Taking this as an example, she asked the government whether it would be open to improving French-language training within businesses and requiring that employers offer such training. Minister Jolin-Barrette replied that this is a subject for another section of the bill. He specified that if an amendment in this regard were to be proposed, the Committee would evaluate it then.

Both clause 35 and 36 of the bill were adopted.

The Committee then moved to consider clause 37 of the bill which replaces Art. 47 and 48 of the Charter with 47, 47.1, 47.2, 47.3, 47.4, 47.5, and 48. This section establishes the complaint mechanism in the event requirements under the previous sections are not followed (i.e. when an employer designates a position as bilingual without conducting the three-step analysis). This mechanism is in line with the current system for dealing with complaints regarding discrimination in the workplace through the Commission des normes, de l'équité, de la santé et de la sécurité au travail (CNESST). This clause was adopted without discussion.

Today, the Committee continues its clause-by-clause examination with clause 38 of the bill.