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# e2r Alert!

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## Highlight on Recent Legislative Changes for Federally Regulated Employers

There always seems to be some kind of legislative changes happening somewhere, and this time, the focus is on federally regulated employers.

**Quebec:** *An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts*

The above Act received Royal Assent on June 20, 2023 and has come into force as of that date (with a few exceptions which come in to force at a later date).

As noted in the title this is another piece of language protection legislation in Quebec, but this one is geared specifically toward federally regulated private businesses operating in Quebec (excluding the broadcasting sector or corporations subject to the Official Languages Act).

The Act requires that (this is a non-exhaustive summary of certain key points):

- Employees have the right to carry out work and be supervised in French.
- Any work 'instruments' (we are thinking computers, software etc.) that are widely and regularly used as part of the employment relationship must be available in French.
- All documents related to employment such as initial on-boarding and employment application forms, individual employment contracts (if contract of adhesion – i.e. not open to negotiation), transfer, promotion or change of terms documents related to employment, training documents produced for employees, employee handbooks and policies, notices of termination of employment, as well

as collective agreements and any related ancillary documents must be available in French.

- Employers must take steps to actively foster the use of the French language in their workplaces; this includes forming a committee in this regard and advising employees of their rights under the Act.
- A federally regulated private employer may not impose any adverse consequence because an employee only speaks French, does not have sufficient knowledge of a language other than French (unless this is objectively required for the role and this is communicated in the job advertisement), or in relation to an employee who has initiated a complaint with the Commissioner of Official Languages regarding their language rights.

### **Federal Competition Act (with Provincial scope):**

On June 23, 2023, *An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022, and other measures* (the "BIA") received Royal Assent and came into force on that same day. The BIA was housed within Bill C-19, which was introduced on April 7, 2022, and contains a series of amendments to the *Competition Act* (the "Act"). Breaches of the new Act requirements are severe and include uncapped fines and/or imprisonment for up to 14 years.

While the substance of the Act falls within the purview of corporate law practitioners, given the employment implications of certain of these amendments, we wanted to bring these to the attention of employers.

### **What is prohibited:**

The key prohibitions are captured under the new subsection s.45(1.1) of the Act:

*45 (1.1) Every person who is an employer commits an offence who, with another employer who is not affiliated with that person, conspires, agrees or arranges*

- a. to fix, maintain, decrease or control salaries, wages or terms and conditions of employment; or*
- b. to not solicit or hire each other's employees.*

What does this mean? You cannot collude with an unaffiliated employer to limit or fix in any way the items noted above. So, the previous practice among some employers of

'benchmarking' in their industry would likely be captured. The prohibition captures discussions between senior employees and executives of unaffiliated corporations as well, so these conversations must be avoided.

Similarly, unaffiliated corporations cannot agree to not poach each other's employees. This means you cannot agree with another unaffiliated company to not solicit or hire their employees – note that this is a reciprocal type of agreement.

There are certain legal defenses recognized under the Act and we encourage any concerned clients to engage their corporate law counsel for an in-depth review of these changes.

### **FEDERAL – Canada Labour Code – Expense Reimbursement and Terms of Conditions of Employment Written Statement**

Recent modifications to the regulations under the *Canada Labour Code* came into effect on July 9, 2023.

#### Expense Reimbursement:

Federally regulated employers will be required to reimburse employees for work/employment related expenses. The basic criteria as outlined in the Interpretation Guide are:

- The employee does **not** have to pay the expense as per a written agreement or collective agreement
- The employee must have paid the expense out-of-pocket
- It must be work-related, and
- It must be reasonable

#### Terms of Conditions of Employment Written Statement:

Federally regulated employers must, within 30 days of employment, or within 30 days of a change to those terms, provide a written statement that outlines:

- the names of the parties to the employment relationship;
- the job title of the employee and a brief description of their duties and responsibilities;
- the address of the ordinary place of work;

- the date on which the employment commences;
- the term of the employment;
- the duration of the probationary period, if any;
- a description of the necessary qualifications for the position;
- a description of any required training for the position;
- the hours of work for the employee, including information on the calculation of those hours and rules regarding overtime hours;
- the rate of wages or salary and the rate of overtime pay;
- the frequency of pay days and the frequency of payment of any other remuneration;
- any mandatory deductions from wages; and
- information about how the employee can claim reimbursement of reasonable work-related expenses.

Employers must retain the statement for 36 months after employment ends. Additionally, employers will be required to provide any materials regarding employee rights created by the Federal Minister of Labour within 90 days of July 9, 2023 or within 90 days of those materials being made available (new employees must receive this within 30 days of commencing employment).

We believe much of this will be covered in your employment agreements and any amendments you make, however the training component may be an additional item to add to your employment agreements along with a job description with qualifications and a statement regarding work-related expense procedures.

If you would like to discuss any of the above noted changes in greater detail, we recommend reaching out to speak to an e2r™ Advisor.