

LABOUR & EMPLOYMENT 2019 EXPERT GUIDE

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Recent Developments in Québec Employment Law

By François Garneau & Isabella Gallo

In October 2018, a new majority government was elected in Québec. Since then, it has introduced two major pieces of legislation affecting the workplace and has been involved in a whistleblowing scandal. The following will briefly discuss these issues and their respective repercussions.

In March 2019, following-up on an election promise, the government introduced legislation to ban the wearing of religious signs by government employees in a position of authority such as judges, policeman and prison guards.¹ However, in a more surprising move, the legislation proposes to extend the ban to teachers in the public school system. That being said, the legislation does provide a grandfather clause that would preserve the employment of those who were already employed at the time of the coming into force of the legislation and chose to wear conspicuous religions symbols or garments in the workplace. This portion of the legislation has been met with intense criticism but the government has indicated that it will shield the legislation from judicial review by invoking a special notwithstanding clause in the Constitution. Some public sector employees and a number of politicians have vowed neither to implement nor respect the legislation and have gone so far as to suggest a campaign of civil disobedience. Nevertheless, given that the government holds a comfortable majority, it is to be expected

1. *Bill n°21 : An Act respecting the laicity of the State.*

that the legislation will come into force though it remains to be seen whether the government will abandon the prohibition in respect to teachers working in the public school system.

The newly elected government also introduced legislation² to reduce the number of immigrants admitted to Québec and decided to introduce a new system to deal with immigrant applications in order to better align applicants with the needs of the workforce. However, it decided to set aside 18,000 existing applications which had still not been dealt with by the Québec Immigration Department. Though the legislation was met with approval by most business organisations who felt that the new legislation would better align the skills of the newly arrived immigrants with the requirements of employers, the Québec Courts nonetheless forced the government to continue to process the nearly 20,000 already submitted applications, and this until the legislation in question came into force.

Ironically, there is currently in Québec a chronic shortage of qualified workers. In order to encourage older workers to either remain in the workforce or to re-enter the workforce, the government has introduced a number of fiscal incentives. Amongst these, the non-2. *Bill n°9 : An Act to increase Québec's socio-economic prosperity and adequately meet labour market needs through successful immigrant integration.*



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taxation of part of an individual's state pension income, the non-taxation of part of the job income generated by an employee over the age of 60 and the possibility of dividing pension income with a spouse. At this stage, it remains to be seen whether these incentives will have any measurable impact. Nevertheless, it should be noted that there is a clear tendency for older workers to remain in the workforce but this may have more to do with demographics and economics than with fiscal incentives. In this respect, there has been a significant rise in litigation by groups of employees over the age of 65 to force employers to provide group insurance benefits to these employees. Typically, in Canada, coverage ceases at age 65 in most group insurance policies but this limitation is being contested as a form of discrimination based on age. This will put increased pressure on employers and insurers to provide this type of coverage to employees over the age of 65.

A few years ago, following numerous scandals in the construction industry and the municipal sector also involving the Québec Department of Transport, the previous government introduced legislation intended to protect whistleblowers working for the provincial government and the public sector. Surprisingly, the legislation did not apply to municipalities even though many of the corruption scandals involved criminal conduct by elected municipal officials. In February 2019, a whistleblower who worked as an agronomist in the Québec Department of Agriculture was terminated because he had, according to the Department of Agriculture, sent a confidential internal document to a journalist. The whistleblower was very concerned with the undue influence of private pesticide manufacturers on a departmental committee set up to study the use of pesticides. Under the law, such a disclosure would only be permissible if a certain number of prior steps had been followed. In this case, it is unclear whether the whistleblower had followed these initial steps but his termination was perceived by the public as a form of retaliation on the part of the government for disclosing a

subject of great public interest. The outcry was so strong that the government was forced to convene a parliamentary commission in order to study the effect of pesticides on Québec agriculture and the environment. It was also revealed that many agronomists were employed by pesticide manufacturers and were remunerated through a bonus scheme which served as an incentive to sell even more pesticides even though such a practice was strictly prohibited by the Code of Ethics governing their profession. The irony in all of this is that the whistleblower that was terminated has now submitted his candidacy to be the president of the professional order of agronomists and has promised to enforce the Code of Ethics. In a very recent article, it was learned further to an access to information request made by the press, that more than a dozen governmental employees have recently been sanctioned by the government for disclosing confidential information to the press which they felt to be in the public interest. Clearly the legislation has not achieved its objective of protecting whistleblowers and providing the public with access to questionable practices or even criminal activity within the government.

In addition to the above, many amendments were introduced to the Québec Act Respecting Labour Standards (2018) and have introduced changes to the investigation of psychological and sexual harassment in the workplace in the wake of the #MeToo Movement. Also, the government has sought to reign in and better police the activities of personnel placement agencies in order to limit the wage discrepancies arising out of the use of employees performing the same work in the same establishment. This will certainly affect the hiring practices of many employers.

As can be seen from the above, the employment situation in Québec is ever evolving and we will keep you posted on all further developments.