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Personnel placement and recruitment agencies : what are the constraints of the new regulation?

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In June 2018, amendments made to the *Labour Standards Act* ("LSA") included additional obligations and responsibilities for personnel placement agencies and temporary foreign worker recruitment agencies (the "Agencies").

However, these amendments were only supposed to come into effect on the date the government adopted a regulation setting out the standards and procedures for giving effect to the amendments to the *Labour Standards Act*.

On April 10, 2019, the Quebec Minister of Labour, Employment and Social Solidarity published a Draft "*Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers*" (the "Draft Regulation").

Although the introductory text to the Draft Regulation states that "*the impact study shows that the proposed measures will have an insignificant impact on enterprises*", on the contrary, our analysis of the Draft leads us to conclude that it will impose significant constraints on the Agencies. The beneficiaries of this reform appear, rather, to be the Agency workers and client enterprises.

Agency Licence

The Draft Regulation establishes a mandatory licensing scheme for Agencies:

To obtain an operating licence issued by the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* ("CNESST"), the Agencies and their officers must meet a series of criteria relating to integrity, transparency and solvency.
These Agencies and their officers must be in good standing with various governmental departments and bodies, both in terms of compliance with the laws and the payment of fees or contributions. For example, an Agency may be disqualified if "*in the 5 years preceding the application, the person, partnership or other entity has been condemned by an irrevocable decision of a court relating to discrimination, psychological harassment or reprisals, as part of employment*" or because of criminal or penal convictions connected with the carrying on of the activities covered by the license application.
All licences must be renewed every two years and, in the absence of new facts, a period of two years must elapse before a new licence application can be filed following a denial.
Applications for a placement agency licence must be supported by the payment of security in the amount of $15,000 (to guarantee the protection of employees' rights under the LSA).

Protection Of The Rights Of Agency Employees

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The Draft Regulation requires Agencies to take various measures to promote the exercise by employees of the rights protected by the *Labour Standards Act* ("LSA"). For example:

> The Agency must provide the employee it assigns to a client enterprise with a document describing his or her working conditions and identifying the enterprise in question.
> It must also provide the employee with the information documents made available by the CNESST concerning employees' rights and employers' obligations in respect of labour.
> The Agency must remind the client enterprise of its obligations regarding employee health and safety.
> The Agency may not charge fees to an employee for his or her assignment or training.
> Finally, restrictions on the hiring of Agency employees by a client enterprise may not exceed six months following the beginning of the assignment.

Administrative Measures And Appeals

The CNESST may suspend an Agency's licence at any time in the event of a breach of the requirements and, once the Draft Regulation has come into force, the Agency will be able to appeal the CNESST's decision to the Administrative Labour Tribunal (the “ALT”).

Procedures For The Forthcoming Adoption Of The Draft Regulation

Anyone wishing to make comments on the Draft Regulation is invited to submit them in writing to the Minister during the 45-day period beginning on April 10, 2019. We expect that various associations will be up in arms to get the Minister to relax what amounts to a very restrictive regulatory framework.

At the end of this 45-day consultation period, the Minister may proceed with the formal publication of the Regulation, which will come into effect 15 days after publication.

Agencies that are already operating on the date the Draft Regulation comes into effect may continue to operate, provided they apply to the CNESST for a licence within 45 days of that date.

Note: All the provisions of the *Labour Standards Act* ("LSA") relating to Agencies will become law at the same time as the Regulation, including section 41.2 of the LSA, which prohibits a placement agency from remunerating an employee at a lower rate of wage than that granted to the employees of the client enterprise who perform the same tasks in the same establishment solely because of the employee's employment status.

For the complete version (only available in French) of the draft regulation, click here.

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