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Newsletter

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New Rules for Placement Agencies and Recruitment Agencies for Temporary Foreign Workers



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On January 1, 2020, a new regime requiring placement agencies to obtain a license has come into force

As part of the recent amendments that were made to the *Act Respecting Labour Standards* (“ARLS”) in 2018, newly enacted section 92.5 ARLS provides that personnel agencies or recruitment agencies for temporary foreign workers will be obliged to hold a licence issued by the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (“CNESST”) in order to operate. However, this section only came into force with the adoption, by the government, of a regulation regarding the issuance of such licenses.

This day has arrived. On November 27, 2019, the *Regulation Respecting Personnel Placement Agencies and Recruitment Agencies for Temporary Foreign Workers* (hereinafter the “**Regulation**”) was published in the Official Gazette and has come into force on January 1, 2020.

This new Regulation applies to two types of agencies that are defined as follows:

- “Personnel placement agency” means a person, partnership or other entity that has at least one activity consisting in offering personnel leasing services by

providing employees to a client enterprise to meet its labour needs.

- “Recruitment agency for temporary foreign workers” means a person, partnership or other entity that has at least one activity consisting in offering services for the recruitment of temporary foreign workers for a client enterprise or in assisting the enterprise in its efforts to recruit such workers.

In light of these definitions, an organization need only carry on one of such activities in order to be qualified as a person, partnership, or other entity qualified as an agency for the purposes of the Regulation.

Conditions for obtaining a license

To obtain a license, the agency will need to submit the requisite form to the CNESST¹ and provide all of the information and documentation. Such a license is valid for a period of two years². The cost for obtaining the license is \$1,780 and is payable in two annual payments of \$890, which are not refundable.

When the agency is not a physical person, such a request must be made by a physical person who will act as its respondent. This person must be an officer of the enterprise and be 18 years or older³.

Furthermore, a personnel placement agency must provide security in the amount of \$15,000 to guaranty payment to an employee in a case of non-payment of moneys that are owed to him or her⁴. Such security may be provided by the remittance of a surety bond, a certified cheque or a bank draft payable to the order of the CNESST⁵.

Conditions for maintenance of a license

The holder of a license must ensure that it respects several conditions in order to maintain it. It must, *inter alia*, display the licence in a conspicuous place in each of its establishments and indicate its licence number on all documents used in the course of its activities or for advertisement purposes, which includes invoices, contracts and websites⁶.

Furthermore, the agency must remit to the temporary or foreign worker affected to a client a document describing the working conditions, *inter alia*, the wage offered and the name and contact information of the client enterprise⁷. It must also remit to the temporary or foreign worker the information documents made available by the CNESST concerning the employee's rights and other information⁸.

The license holder must also keep, for at least six years after the date of hiring, the documents provided by the Regulation.

Specific requirements applicable to personnel agencies

It is important to underline that the holder of a personnel placement agency licence may not charge a temporary foreign worker any fees related to his recruitment⁹. The contract will be entirely at the costs of the client enterprise. Furthermore, the agency is prohibited from taking measures or agreeing to provisions preventing or restricting the employee's hiring by the client enterprise beyond the six-month period following the assignment¹⁰.

In case of suspension, revocation or non-renewal of a license, any measure preventing or restricting the employee's hiring by a client enterprise becomes null and void¹¹ and the agency has the obligation to advise the client enterprise of same¹².

Consequences

These new rules will have important consequences both for agencies and for their clients. A client enterprise cannot retain the services of an agency that is not the holder of a license delivered by the CNESST¹³.

If you are affected by the above-mentioned rules, it will be important for you to take the necessary steps in order to ensure that your situation is compliant with the new law, which came into effect on January 1, 2020.

Other legal measures which provide for, *inter alia*, solidarity between the client enterprise and the agency with respect to the pecuniary obligations provided for by the ARLS or the Regulation¹⁴ and the not inconsiderable fines that can be levied against a business that knowingly retains the services of an agency that does not hold a valid license will also apparently come into force at the same time¹⁵. This situation will need to be monitored.

1. S. 5 of the Regulation.
2. S. 15 of the Regulation.
3. S. 6 of the Regulation.
4. S. 27 of the Regulation.
5. S. 28 of the Regulation.
6. S. 21 of the Regulation.
7. S. 22(1)a) and 24(1)a) of the Regulation.
8. S. 22(1)b) and 24(1)b) of the Regulation.
9. S. 23(1) of the Regulation.
10. S. 23(2) of the Regulation.
11. S. 45 of the Regulation.
12. S. 41 (3) of the Regulation.
13. New section 92.6(1) of the ARLS.
14. New section 95(2) of the ARLS.
15. New section 140.1 of the ARLS.

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

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