



NATIONAL ASSEMBLY OF QUÉBEC

SECOND SESSION

FORTY-THIRD LEGISLATURE

Bill 195

**An Act limiting the use of personnel
placement agencies' services
and independent labour in
the educational childcare sector**

Introduction

**Introduced by
Mr. Alexandre Leduc
Member for Hochelaga-Maisonneuve**

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EXPLANATORY NOTES

This bill limits and regulates the use of personnel placement agencies' services and independent labour in the educational childcare sector.

The bill prohibits subsidized educational childcare providers from calling on independent labour or on a personnel placement agency's services, except if the agency is a non-profit body or a cooperative. The Government may, however, determine by regulation exceptions to that prohibition for a given territory or trade.

The activities of personnel placement agencies that lease the services of one of their personnel members to an educational childcare provider are regulated, and certain regulatory powers are granted to the Government in that regard.

Lastly, the Government may, by regulation, determine to what extent a home educational childcare provider may call on independent labour.

LEGISLATION AMENDED BY THIS BILL:

- Educational Childcare Act (chapter S-4.1.1).

Bill 195

AN ACT LIMITING THE USE OF PERSONNEL PLACEMENT AGENCIES' SERVICES AND INDEPENDENT LABOUR IN THE EDUCATIONAL CHILDCARE SECTOR

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

EDUCATIONAL CHILDCARE ACT

L. The Educational Childcare Act (chapter S-4.1.1) is amended by inserting the following chapter after section 64:

“CHAPTER V.1

“PERSONNEL PLACEMENT AGENCIES AND INDEPENDENT LABOUR

“DIVISION I

“DEFINITIONS

“64.1. For the purposes of this chapter,

“independent labour” means a natural person who, not being a member of a provider’s personnel, provides services under the provider’s direction or control to the provider;

“personnel placement agency” means a person or group that is required to hold a personnel placement agency licence under section 92.5 of the Act respecting labour standards (chapter N-1.1) and for which at least one of the activities is to offer personnel leasing services by providing employees to a provider to meet workforce needs.

“DIVISION II

“PROHIBITION APPLICABLE TO SUBSIDIZED EDUCATIONAL CHILDCARE PROVIDERS

“64.2. No subsidized educational childcare provider may call on independent labour or on a personnel placement agency’s services, except if the agency is a non-profit body or a cooperative.

Despite the preceding paragraph, the Government may, by regulation, provide for exceptions to the prohibition under the first paragraph for a given territory or trade.

“64.3. In exceptional circumstances, the Minister may, on the Minister’s own initiative with regard to a subsidized educational childcare provider or at the request of such a provider, grant an authorization allowing the provider, for the period the Minister determines, to call on the services of a personnel placement agency if the agency is a non-profit body or a cooperative, or on independent labour. If the Minister considers it appropriate, the Minister may renew the authorization for any period the Minister determines.

The provisions of this chapter and those provided for by a regulation made under section 64.11 apply to the provider referred to in the first paragraph during any period determined by the Minister, with the necessary modifications. The Minister may, if the Minister considers it necessary, attach to the authorization or to the authorization’s renewal any conditions in addition to those prescribed by such a regulation.

“DIVISION III

“SPECIAL OBLIGATIONS OF AUTHORIZED PLACEMENT AGENCIES

“64.4. Before a personnel placement agency leases the services of one of its personnel members to a childcare provider, the agency must

(1) hold a civil liability insurance contract in the amount of \$2,000,000 that covers bodily injury and property damage caused by personnel members whose services the personnel placement agency leases to a provider and send a copy of the policy to the provider;

(2) disclose, to the provider to which the personnel placement agency intends to lease the services of one of its personnel members, any refusal by another provider to receive the services of that personnel member, if the refusal is related to the duties likely to be entrusted to the personnel member when the leasing takes place.

“64.5. The placement agency must, during the term of a contract of employment,

(1) maintain the insurance contract referred to in paragraph 1 of section 64.4;

(2) see that none of the personnel members whose services the agency leases to the provider engage in soliciting the members of the provider’s personnel to join the members of a personnel placement agency’s personnel or to leave their employment;

(3) maintain a training, skills development and assessment program for the members of its personnel whose services are leased to the provider; and

(4) specify, in the invoice to the provider, the regular hourly wages paid to each member of the agency's personnel leased to the provider.

“64.6. A personnel placement agency must, within 60 days following the end of each half of the calendar year, provide information to the Minister relating to the services provided to a provider during the half year, expressed in number of hours worked, by job title and by facility, if applicable.

The agency must also reply to any request made by the provider or by the Minister, as applicable, concerning information and documents provided for in this chapter or by a regulation made under section 64.11 that were sent to them.

“64.7. No personnel placement agency may offer or provide the services of the following persons to a provider:

(1) a person who is not bound to the agency by a contract of employment evidenced in writing and indicating the job title and hourly rate;

(2) a person who is employed by a provider or was employed by a provider in the previous three months; or

(3) a person who is not authorized to work in Canada.

“64.8. No personnel placement agency may assert any non-competition covenant or other agreement having similar effects against any person wishing to be hired by a provider or against such a provider, in particular by claiming penalties, compensation or indemnities, or through any retaliatory measure against them.

“64.9. No personnel placement agency may solicit the personnel of the provider receiving employees provided by the agency to join the personnel of a personnel placement agency or to leave their employment.

“DIVISION IV

“SPECIAL OBLIGATIONS OF PROVIDERS

“64.10. A provider must send to the Minister, within 60 days after the end of each half of the calendar year, a list of personnel placement agencies that provided a service during that half year, by facility, if applicable.

“DIVISION V

“REGULATORY POWERS

“**64.11.** The Government may, by regulation,

(1) establish a maximum hourly rate for any day of work performed by a member of a personnel placement agency’s personnel for any job title or any job class the Government identifies and whose services correspond to the tasks of a subsidized educational childcare provider’s personnel;

(2) determine the obligations of a body or a placement agency, in addition to those provided for in this chapter;

(3) establish any other terms and conditions relating to the use of a personnel placement agency;

(4) identify, among the provisions of a regulation made under this section, those whose violation constitutes an offence and renders the offender liable to the fine provided for in section 117.3; and

(5) determine to what extent a home educational childcare provider may call on independent labour.

The provisions of a government regulation may vary depending on the classes of bodies, the sectors of activity of personnel placement agencies, the classes of personnel, or the territory the Government determines.

“DIVISION VI

“ADMINISTRATIVE MEASURES

“**64.12.** In the event a violation of any provision of this chapter or a regulation made under it is observed, the Minister may impose the following administrative measures:

(1) in the case of a personnel placement agency, a temporary or permanent prohibition from offering services to a provider; or

(2) in the case of a provider, an obligation to submit to the Minister, within the time indicated, a plan describing the measures put in place to ensure compliance by the provider with this Act.

Where it is found that an amount has been paid in contravention of this Act and that the personnel placement agency fails to reimburse it, the Minister may order the amount be reimbursed within the time indicated and provide that, failing timely reimbursement, a prohibition from offering services to a provider will take effect and will be lifted only after the amount owed or a lesser amount to the satisfaction of the Minister has been reimbursed.

“64.13. Before taking a measure referred to in section 64.12, the Minister must notify to the personnel placement agency or to the provider the prior notice prescribed by section 5 of the Act respecting administrative justice (chapter J-3) and grant the agency or provider at least 10 days to submit observations.

The Minister’s decision must be in writing and give reasons. It takes effect on the date it is notified to the agency or provider concerned, or on any later date indicated in the decision.

On receipt of a decision imposing a prohibition under subparagraph 1 of the first paragraph of section 64.12 or under the second paragraph of that section, the personnel placement agency must inform every provider with which it does business or that is specifically affected by the decision, as well as all personnel whose services it leases to such a provider, of the decision and indicate to them the date from which the measure is to take effect and its duration, as applicable.

“64.14. At the request of a personnel placement agency, the Minister may lift the administrative measure if the Minister believes that the situation has been remedied or that new facts warrant a different decision.

“64.15. The amounts ordered to be reimbursed under the second paragraph of section 64.12 bear interest at the rate provided for in the first paragraph of section 28 of the Tax Administration Act (chapter A-6.002) from the 31st day after the effective date of the Minister’s decision.

“64.16. The Minister maintains a list of the personnel placement agencies under a prohibition referred to in subparagraph 1 of the first paragraph of section 64.12 or under the second paragraph of that section and makes it public. On the list the Minister indicates the time period for which the imposed prohibition is in effect.”

2. Section 73 of the Act is amended by inserting the following paragraph after paragraph 2:

“(2.1) at any reasonable time, enter any personnel placement agency for which one of the activities is to provide personnel leasing services by providing employees to a subsidized educational childcare provider to meet workforce needs;”.

3. The Act is amended by inserting the following section after section 117.2:

“117.3. Anyone who contravenes section 64.2 or sections 64.4 to 64.11 or a provision of a regulation whose violation constitutes an offence under subparagraph 4 of the first paragraph of section 64.11 is liable to a fine of \$1,000 to \$25,000 in the case of a natural person or \$3,000 to \$75,000 in any other case.”

FINAL PROVISION

4. This Act comes into force on (*insert the date that is six months after the date of assent to this Act*).