

Gouvernement du Québec

O.C. 1205-2012, 12 December 2012

An Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20)

Industrie de la construction
—**Service de référence de main-d'oeuvre**

Regulation respecting the Service de référence de main-d'oeuvre de l'industrie de la construction

WHEREAS, under subparagraph 8.6 of the first paragraph of section 123 of the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20), the Government may, by regulation, determine the method of operation of the labour-referral service for the construction industry, as well as the conditions, restrictions and prohibitions applicable to its use by the employers or the categories of employers the Government determines, employees and holders of a labour-referral service licence;

WHEREAS the first paragraph of section 76 of the Act to eliminate union placement and improve the operation of the construction industry (2011, chapter 30) provides that the first government regulation made under subparagraph 8.6 of the first paragraph of section 123 of the Act respecting labour relations, vocational training and workforce management in the construction industry is not subject to the publication requirement set out in section 8 of the Regulations Act (chapter R-18.1);

WHEREAS the second paragraph of section 76 of the Act to eliminate union placement and improve the operation of the construction industry provides that the first regulation made under subparagraph 8.6 of the first paragraph of section 123 of the Act respecting labour relations, vocational training and workforce management in the construction industry must, however, be examined by the competent committee of the National Assembly before it is adopted by the Government;

WHEREAS a draft of the Regulation respecting the Service de référence de main-d'oeuvre de l'industrie de la construction was examined by the Commission de l'économie et du travail on 6 December 2012;

IT IS ORDERED, therefore, on the recommendation of the Minister of Labour:

THAT the Regulation respecting the Service de référence de main-d'oeuvre de l'industrie de la construction, attached to this Order in Council, be made.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation respecting the Service de référence de main-d'oeuvre de l'industrie de la construction

An Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20, s. 123, 1st par., subpar. 8.6)

DIVISION I
DECLARATION

1. The declaration of labour needs that the employer must make to the Service de référence de main-d'oeuvre pursuant to paragraph 1 of section 107.8 of the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20) includes the following:

- (1) the employer's name and contact information;
- (2) the name of the person responsible for the application and the person's contact information;
- (3) the number of employees required;
- (4) the trade or occupation of the employees required and, if applicable, their specialty or the activity they must be able to carry out;
- (5) in the case of a trade, the status of journeyman or apprentice, if applicable;
- (6) the region or subregion in which the work will be primarily performed;
- (7) the date set for the hiring and, if it is determined, the duration.

The employer may also indicate any other relevant element such as the apprenticeship period in the case of an apprentice, specific training, the sector of activity or the site for which the work is required.

In this Regulation,

(1) “Service de référence de main-d’œuvre” or “Service” means the Service de référence de main-d’œuvre administered by the Commission de la construction du Québec under section 107.7 of the Act;

(2) “employer” means an employer within the meaning of subparagraph *j* of the first paragraph of section 1 of the Act.

2. The declaration is sent in the manner prescribed by the Commission.

3. An application for a hiring number, made in accordance with the provisions of the Regulation respecting the hiring and mobility of employees in the construction industry (chapter R-20, r. 6.1), serves as a declaration of labour needs for the employer hiring directly an employee without the need for a referral from the Service.

DIVISION II GENERAL MODE OF OPERATION OF THE SERVICE DE RÉFÉRENCE

§1. Information to associations holding a licence for the purposes of their participation in the Service de référence and communications with employers

4. As soon as possible, on receiving a declaration of labour needs complying with section 1, the Commission so notifies every association holding a referral licence authorizing the association to refer employees covered by the declaration and makes the declaration available.

The Commission must also notify every association holding a referral licence and authorized to refer employees of the trade or occupation concerned in another region when it is foreseeable that the employer will be able to use employees outside the region. Those associations are then authorized to refer employees outside the region only for the purposes of that declaration of labour needs.

5. Associations holding a licence may require supplementary information concerning the declaration of labour needs by sending a request to that effect to the Service in the manner prescribed by the Commission.

The Service sends the request for supplementary information immediately to the employer and, if the request is received within the period provided for in section 12, sends the employer’s reply to the association holding a licence that made the request.

An employer may also contact, in the manner prescribed by the Commission, associations holding a licence to clarify the request.

6. An employer updates as soon as possible the employer’s declaration of labour needs and modifies or specifies the needs or criteria listed in the declaration. Sections 4 and 5 then apply.

§2. Reply of the Commission to an employer

7. The Commission sends as soon as possible to the employer a list of employees meeting the criteria listed in the employer’s declaration pursuant to the first paragraph of section 1. An employee may not be referred more than once during a single day, except if all the employees that could be referred have already been referred.

The list contains a number of employees at least equal to the number requested by the employer when the employees are available in a sufficient number. Women meeting the criteria listed in the declaration pursuant to the first paragraph of section 1 are all referred whereas men are referred on the basis of the following ratios:

- (1) not more than 10 for a request for 1 employee;
- (2) not more than 20 for a request for 2 to 5 employees;
- (3) not more than 30 for a request for 6 to 10 employees;
- (4) not more than 40 for a request for 11 to 20 employees;
- (5) not more than 50 for a request for 21 to 35 employees;
- (6) not more than a number equivalent to 150% of the number requested for any request greater than 35 employees.

The Service must be accessible and available at all times according to the terms determined by the Commission.

8. The Commission also provides a personalized referral service through which it makes sure that the employees’ interest is served by contacting them personally.

The service may be provided to an employer when the employer has not managed to fill its needs from the lists sent pursuant to sections 7 and 13.

An employer who is in a situation referred to in the second paragraph may also request that the Commission send to the employer a new list complying with section 7.

9. Every employee list sent by the Commission pursuant to this Subdivision lists first the women then the men.

Women and men are listed on the basis of the number of hours worked in the 10 calendar years preceding the year of the request, in decreasing order.

10. Where an insufficient number of employees meet the criteria listed in the employer's declaration pursuant to the first paragraph of section 1, the Commission refers employees from another subregion or, in compliance with the applicable rules, from another region. Except for the subregion or region of origin, those employees must meet the criteria listed in the employer's declaration pursuant to the first paragraph of section 1.

Those employees are listed after the employees of the subregion concerned. Section 9 applies to the listing and classification of those employees, with the necessary modifications.

11. The name of each employee on the list is accompanied by the employee's contact information, the name of the city or town of the employee's domicile and the information enabling the employer to validate compliance with the criteria listed in the employer's declaration pursuant to the first paragraph of section 1. The name may also be accompanied by any other relevant information the disclosure of which is authorized by the employee.

§3. Reply of associations holding a licence

12. An association holding a licence may reply to an employer's request within 48 hours of receipt of the notice provided for in section 4.

13. An association holding a licence that replies to the request sends to the Commission, in the manner prescribed by the Commission, the list of employees it refers. The name of the association's representative and contact information appear on the list.

The maximum ratios provided for in the second paragraph of section 7 apply to all the employees referred by the association holding a licence.

14. Subject to the second paragraph, referred employees must meet all the criteria listed by the employer in the declaration pursuant to the first paragraph of section 1. They must also, to the extent that the association holding a licence has the relevant information, meet the criteria listed by the employer in the declaration pursuant to the second paragraph of section 1.

Where an insufficient number of employees meet the criteria listed in the employer's declaration pursuant to section 1, the association holding a licence may refer employees from another subregion or, if so authorized pursuant to the second paragraph of section 4, from another region. Except for the subregion or region of origin, those employees must meet the criteria listed in the employer's declaration pursuant to section 1, in accordance to what is provided for in the first paragraph.

15. The name of each employee on the list of an association holding a licence is accompanied by the employee's contact information, the name of the city or town of the employee's domicile and the information enabling the employer to validate compliance with the criteria listed in the employer's declaration pursuant to the first paragraph of section 1. The name may also be accompanied by any other information the disclosure of which is authorized by the employee.

16. The Commission sends to the employer a copy of the lists received within the period provided for in section 12, as soon as possible and as they are received. The Commission confirms to the association holding a licence that the association's list has been sent to the employer. A list received late is not sent.

The Commission does not validate the information on the lists.

17. After receiving confirmation that its list has been sent to an employer, an association holding a licence may contact the person responsible for the request when the employer has agreed to it pursuant to subparagraph 7 of the first paragraph of section 1.

An employer may also contact the associations holding a licence to obtain clarifications on a referred employee.

A communication provided for by this section between an association holding a licence or the association's representative and an employer or the employer's person responsible may at no time allow the referral of employees other than those on the list sent pursuant to section 13.

18. An employer contacted by an association holding a licence pursuant to the first paragraph of section 17 must, when sending a hiring notice pursuant to the provisions of the Regulation respecting the hiring and mobility of employees in the construction industry, indicate the name of the association and of its representative.

DIVISION III **EMERGENCY SITUATIONS**

19. In this section, "emergency situation" means a situation in which the work must be performed immediately to prevent material damage to an employer or recognized client, or a danger for public health or safety.

The urgent need of an employee or the possible or actual enforcement of a contract penalty clause, in particular for late delivery of the work, does not constitute an emergency situation within the meaning of this Division.

20. The existence of an emergency situation suspends the application of Divisions I and II.

21. In the event of an emergency situation, an employer contacts the associations holding a licence of the employer's choice to inform them of the situation and labour needs.

Every association holding a licence may then refer employees to the employer under the terms they agree on.

22. Within 24 hours of the referral, every association holding a licence sends to the Service a list of referred employees. The list states the name of the employer and the fact that the employer has declared being in an emergency situation.

23. Within 48 hours of the emergency situation, the employer sends to the Service a report indicating

(1) the date of the emergency situation, its location, nature and foreseeable consequences on the material property of the employer or the recognized client, or on the public's health or safety;

(2) the associations holding a licence contacted by the employer and the name and contact information of their representatives;

(3) the name of the employees hired and, for each employee, the employee's trade, occupation and, if applicable, specialty or the activity the employee may carry out, as well as the name of the association holding a licence that referred the employee.

The report sent within the prescribed period serves as the declaration the employer must make pursuant to paragraph 1 of section 107.8 of the Act.

24. The Service may require from any association holding a licence referred to in section 22 or identified pursuant to subparagraph 2 of the first paragraph of section 23, a detailed report of the association's activities related with the emergency situation, in the form and time indicated by the Service. It may also, in the same manner, require from the employer or association holding a licence any clarification deemed necessary following the receipt of a report.

DIVISION IV **AVAILABILITY OF EMPLOYEES**

25. Every employee updates his or her availability for the purposes of the activities of the Service by sending the information to the address determined by the Commission.

Updating his or her availability enables the employee to inform the Service of the employee's wish to be referred even if the employee is working or, conversely, the employee's wish not to be referred even if the employee is not working.

Where an employee has expressed his or her wish to be referred even if the employee is working, the Commission specifies that the employee is "at work" when referring the employee under section 7 or 8.

DIVISION V **REPORT**

26. The Commission must, no later than 31 March of each year, send to the Minister of Labour a report of the activities of the Service de référence for the preceding calendar year.

The report contains an analysis of the mode of operation of the Service, including the participation of associations holding a licence and the cooperation of employers and employees, information on emergency situations, as well as comments on the communications between employers and associations holding a licence. It may also contain any proposal for improving the mode of operation of the Service.

27. This Regulation comes into force on 9 September 2013.

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