

Employment Update: Recent Changes to Employment Legislation in Ontario: Bill 27, Working for Workers Act, 2021

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On November 30, 2021, the Ontario government passed Bill 27, *Working for Workers Act, 2021* ("Bill 27"). Bill 27 has made significant changes to the *Employment Standards Act, 2000* ("ESA"), *Occupational Health and Safety Act* ("OHSA") and the *Workplace Safety and Insurance Act, 1997* ("WSIA"). For most employers in Ontario the two most significant changes relate to (i) mandatory policies on employees' "right to disconnect", and (ii) prohibitions on the use of non-compete provisions in Ontario employment agreements (subject to limited exceptions).

Right to Disconnect

Employers with twenty-five (25) or more employees (as of January 1st of each year) are required to implement a written policy (before March 1st of that year) about employees "disconnecting from work". Bill 27 defines "disconnecting from work" as not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work.

Notwithstanding the above timelines, Bill 27 provides a six (6) month grace period from the date Bill 27 received royal assent (December 2, 2021) for employers to draft such policies.

For example, if on January 1, 2022, an employer has twenty-five (25) employees, they will have until June 2, 2022 to draft a policy on disconnecting from work. However, if an employer first reaches twenty-five (25) employees as of January 1, 2023, they will need to draft a policy by March 1, 2023.

An employer must provide this new policy to existing employees thirty (30) days following its drafting and provide new employees the policy thirty (30) days following their start date.

Bill 27 does not specify specific content that must be included in this policy. However, it notes that content may be “prescribed” at a later date. Therefore, employers should have their policies reviewed on a regular basis to ensure compliance with these new, and future, requirements.

Prohibition of Non-Compete Provisions

Bill 27 mandates a blanket prohibition on non-compete clauses in any agreement between an employer and employee. Bill 27 defines a “non-compete agreement” as an agreement, between an employer and an employee that prohibits the employee from engaging in any business, work, occupation, profession, project or other activity that is in competition with the employer’s business after the employment relationship between the employee and the employer ends.

However, as a result of recent amendments to Bill 27, this prohibition includes an exception where the non-compete agreement either applies to the employment of an “executive”, or was agreed to in the sale of a business.

Bill 27 defines an executive as any person who holds the office of chief executive officer, president, chief administrative officer, chief operating officer, chief financial officer, chief information officer, chief legal officer, chief human resources officer or chief corporate development officer, or holds any other chief executive position.

Therefore, if an employer wishes to enter into a non-compete agreement with an employee, it will be important to review whether the employee meets the ESA’s newly-introduced definition of “executive,” in addition to considering the enforceability of the non-compete agreement under common law.

Bill 27 also provides that a non-compete will remain enforceable if it was agreed to in course of the sale of a business, and the seller is subsequently employed by the purchaser.

Other Changes under Bill 27

Recruiters and Temporary Help Agencies – Recruiters and temporary help agencies are required to have a licence to operate in the province of Ontario to help protect vulnerable employees from being exploited. Licences automatically expire after one year (except where a longer period is prescribed by regulation), and a public record will be available of all active, revoked and suspended licences.

Internationally Trained Professionals – Bill 27 seeks to remove barriers for internationally trained professionals to enable such individuals to get licenced in a regulated profession and get access to jobs that match their qualifications and skills, such as removing Canadian experience requirements.

Occupational Health and Safety Act – Bill 27 now requires business owners to allow delivery workers to use a company’s washroom if they are delivering or picking up items.

Workers Compensation – Bill 27 now allows surpluses in the Workplace Safety and Insurance Board’s (“WSIB”) Insurance Fund to be distributed over certain levels to businesses. Bill 27 also

enables the WSIB to work with entities, like the Canada Revenue Agency, to streamline remittances for businesses, enabling a way to give them a more efficient method for submitting premiums and payroll deductions.

Ministry of Agriculture – Bill 27 allows the Ministry of Agriculture, Food and Rural Affairs to collect information related to the agri-food workforce to ensure the government can enhance the coordination of services such as vaccination and testing.

We will continue to monitor any further changes resulting from this employment legislation. Please contact Blaney McMurtry's [Labour and Employment Group](#) should you have any questions regarding the impact of this legislation on your business, or wish to have your workplace policies and employment agreements reviewed.

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.