



Ontario Government Tables Bill 27, the Working for Workers Act, 2021

October 29, 2021

On October 25, 2021, the Ontario government tabled **Bill 27**, the *Working for Workers Act, 2021*, which passed First Reading the same day. The Bill contains numerous legislative amendments that will impact the workplace. The changes are summarized in the Ontario government's [news release](#) and [backgrounder](#), and discussed in greater detail below.

The government indicated that many of the amendments are based on issues identified during consultations conducted by the [Ontario Workforce Recovery Advisory Committee](#) (the "Committee"). The Committee was established by the Minister of Labour Training and Skills Development with a mandate to provide recommendations to position Ontario as the best place in North America to recruit, retain and reward workers.

The Right to Disconnect

Bill 27 will amend the *Employment Standards Act, 2000* (the "ESA") to require employers with 25 or more employees to put in place a written policy on disconnecting from work. "Disconnecting from work" is defined 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."

Employers will have six months after Bill 27 receives Royal Assent to put a policy in place. Otherwise, a policy will be required to be put in place by March 1 of any year in which an employer has 25 or more employees as of January 1.

Employers will have to provide a copy of the policy to all employees within 30 days of preparing or changing the policy. New employees must be provided with a copy of the policy within 30 days of becoming employed. Employers will be required to retain copies of every disconnecting from work policy for three years after the policy ceases to be in effect.

There are currently no details about the specific content requirements of the policy, as those will be prescribed by regulation. However, the government's news release suggested that content could include expectations about e-mail response times, or encouragement regarding employees putting out-of-office notifications on when they are not working.



Prohibition of Non-Compete Agreements

A “non-compete agreement” is defined by Bill 27 as “an agreement, or any part of 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” (also known as a non-competition agreement).

Employers (including prospective employers) are prohibited from entering into “an employment contract or other agreement” with an employee (including prospective employees) that is or that includes a non-compete agreement. Any attempt to enter into a non-compete agreement will render the non-compete agreement void. The prohibition on non-compete agreements is deemed to have come into force on October 25, 2021, should Bill 27 become law.

However, if a purchaser and seller in a sale of a business or part of a business enter into an agreement that prohibits the seller from engaging in any business, work, occupation, profession, project or other activity that is in competition with the purchaser’s business after the sale, and the seller becomes an employee of the purchaser immediately after the sale, the prohibition against a non-compete agreement does not apply. A “sale” includes a lease.

There is no prohibition in the Bill against the continued use of non-solicitation agreements, which generally prevent an employee from soliciting the employer’s customers, clients, or suppliers after their employment with the employer has ended.

Recruiters and Temporary Help Agencies - New Licencing Requirements

Bill 27 amends the ESA to require recruiters and temporary help agencies (“THAs”) to be licenced in order to operate in Ontario. Clients, employers and prospective employers are prohibited from knowingly engaging or using the services of an unlicenced recruiter or THA. The provisions applicable to recruiters and THAs are summarized below.

- The Bill outlines provisions regarding the application and renewal process for a licence. Licences will be valid for one year, or as otherwise prescribed by legislation.
- The Regulations may provide for the amount and manner in which security must be provided to the Director of Employment Standards (the “Director”) during the licencing process. The government has indicated an intention to require applicants to provide an irrevocable letter of credit that could be used to repay wages owed to workers.
- Applicants will be required to comply with legislative and regulatory requirements of the application process and to have been in compliance with any orders issued under the ESA or the *Employment Protection for Foreign Nationals Act, 2009*.



- The Director will have the power to refuse to issue or renew a licence if the Director has reasonable grounds to believe that:
 1. Based on the past or present conduct of the applicant, or any officers, directors or representatives of the applicant, the applicant will not carry on business with honesty and integrity and in accordance with the law, or
 2. The applicant has made a false or misleading statement or provided false or misleading information in an application for a licence or a renewal of a licence.
- Those whose applications for a licence are refused, or whose licence is revoked or suspended, must give written notice of the refusal, revocation, or suspension to every client and assignment employee of the THA or every employer, prospective employer or prospective employee who has engaged or used the services of the recruiter, as applicable, within 30 days after the notice is served on the recruiter or THA.
- Recruiters or THAs will have the right to apply in writing for a review by the Ontario Labour Relations Board of a decision refusing a licence or renewal, or revoking or suspending their licence.
- An applicant who has been refused a licence or renewal or whose licence has been revoked may not apply for a licence unless two years have passed, or the applicant satisfies the Director of Employment Standards that new evidence is available.
- The Director of Employment Standards will be required to publish on a Government of Ontario website the names and other information of people who are licenced under the legislation, as well as those whose licences have been revoked or suspended.
- Bill 27 adds record-keeping provisions for clients of THAs and for recruiters to the ESA, which already contains record-keeping provisions for THAs. Anti-reprisal provisions for recruiters will also be added to the ESA, which already contains anti-reprisal provisions for THAs and their clients.
- Under the *Employment Protection for Foreign Nationals Act, 2009*, those who act as a recruiter in connection with a foreign national's employment are not permitted to charge a foreign national a fee for any service, good or benefit provided to the foreign national. Where a corporate recruiter uses the services of another recruiter to recruit or employ a foreign national, Bill 27 will make the directors of the corporate recruiter jointly and severally liable to repay any fees charged to the foreign national by the other recruiter in breach of the legislation.

While not specifically outlined in Bill 27, the government has indicated an intention to hire a dedicated team of officers to address recruiters and THAs exploiting and trafficking domestic and foreign workers.

Internationally Trained Workers - Regulated Professions and Skilled Trades

The Bill proposes to amend the *Fair Access to Regulated Professions and Compulsory Trades Act*,



2006 to remove barriers for internationally trained immigrants to work in their chosen profession. References to a regulated profession also apply to Skilled Trades Ontario in respect of compulsory trades as defined in the *Building Opportunities in the Skilled Trades Act, 2021*. The amendments are summarized below.

- Regulated professions will be required to comply with regulations regarding expedited registration processes that may apply in case of an emergency so that professionals can register faster in emergencies, such as a pandemic, where there is an urgent need for certain professions or trades.
- Regulated professions will be required to comply with regulations regarding English and French language proficiency testing requirements. The government wishes to reduce duplication for official language proficiency testing so that people will not have to complete multiple tests for the purposes of immigration and professional licencing.
- Regulated professions will not be permitted to require Canadian experience as a qualification for registration unless an exemption is granted by the Minister of Citizenship and Immigration based on a demonstrated public health and safety risk. "Canadian experience" will be defined by regulation.
- The authority of a regulated profession to make regulations or by-laws under any other legislation will be subject to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*.
- The legislative provisions establishing the Access Centre for Internationally Trained Individuals are repealed and substituted with the following ways in which the Minister can support the access of internationally trained individuals to regulated professions:
 1. Provide information and assistance to internationally trained individuals who are applicants or potential applicants for registration by a regulated profession with respect to the requirements for registration and the procedures for applying;
 2. Conduct research, analyze trends and identify issues related to the purposes of the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* or to the registration of internationally trained individuals by regulated professions; and
 3. Provide information to organizations that deal with internationally trained individuals, such as ministries, government agencies, regulated professions, community agencies, educational and training institutions and employers, on government programs and services that support the registration of internationally trained individuals in the regulated professions and on fair registration processes within such organizations.

The Minister may also make grants for the above-noted purposes.

- The Lieutenant Governor in Council will have the authority to make regulations establishing time limits for compliance with the legislation or regulations, including maximum time periods for a regulated profession to make a decision. This amendment supports the government's



stated goal of ensuring that licencing processes are completed in a timely way.

Washroom Rights for Delivery Workers

Bill 27 will amend the *Occupational Health and Safety Act* to require the owner of a workplace to provide access to a washroom when requested by a worker who is present at the workplace to deliver anything to the workplace, or to pick anything up at the workplace to deliver elsewhere.

Washroom access is not required if:

- a) Providing access would not be reasonable or practical for reasons relating to the health or safety of any person at the workplace, including the worker who requests to use a washroom;
- b) Providing access would not be reasonable or practical having regard to all the circumstances, including, but not limited to, the nature of the workplace, the type of work at the workplace, the conditions of work at the workplace, the security of any person at the workplace and the location of the washroom within the workplace; or
- c) The washroom is in, or can only be accessed through, a dwelling.

Workplace Safety and Insurance Board Reserve

Bill 27 will allow part of the reserve of the Workplace Safety and Insurance Board (the “WSIB”), currently valued at \$6.1 billion, to be distributed to Schedule 1 employers in accordance with the legislation when specific criteria outlined in the legislation and regulations are met. WSIB decisions regarding distributions or disbursements are not subject to a right of reconsideration by or an appeal to the WSIB or the Workplace Safety and Insurance Appeals Tribunal.

Collection of Information in the Agri-Food Industry

Bill 27 proposes to amend the *Ministry of Agriculture, Food and Rural Affairs Act* to give the Minister of Agriculture, Food and Rural Affairs the power to directly or indirectly collect personal information. The purposes of the information collection include supporting Canadian, provincial or municipal responses to urgent public health or public safety concerns related to agriculture, food or rural affairs, and planning for or responding to emergencies related to agriculture, food or rural affairs.

The Minister is only permitted to collect, use, or disclose personal information if there is no other



information that would serve the same purpose. Additionally, the Minister is not permitted to collect, use, or disclose more personal information than is reasonably necessary.

In Our View

Bill 27 aims to put in place a number of labour-friendly legislative changes, which is an interesting change in position from the government's 2018 repeal of the previous Liberal government's labour-friendly Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*.

The prohibition of non-competition agreements may have significant consequences for employers. If Bill 27 is passed, employers who have entered into non-competition agreements or negotiated non-competition provisions into their contracts with employees will no longer benefit from the protection of such clauses. Employers should also be aware that the legislation makes reference to employment contracts or "other agreements." This broad wording will therefore capture other contracts or agreements that constitute a non-competition agreement, or contain non-competition clauses.

The Bill would bring in significant changes for recruiters and THAs, who would be subject to licencing requirements in order to operate.

However, the details of other changes, such as the right to disconnect, are still subject to regulation. As such, employers may not yet know the extent of their obligations in respect of some of Bill 27's proposed changes.

We will continue to monitor the progress of Bill 27 and provide updates to Focus readers.

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