



## **Bill 27 – The Right to Disconnect, the Future of Non-Competes and Other Changes**

On October 25, 2021, the Ontario Government proposed [Bill 27, Working for Workers Act, 2021](#) (the “Bill”) that, if passed, will introduce significant amendments to six (6) employment-related statutes. The most noteworthy proposed amendments will amend the *Employment Standards Act, 2000* (ESA) to: (1) require employers to have written policies regarding disconnecting from work, (2) prohibit non-competes in employment contracts; and (3) require temporary help agencies to be licenced. In this article, we summarize the proposed changes. At the time of publication, Bill 27 has passed second reading and has been referred to the Standing Committee on Social Policy.

- **Proposed Changes to the ESA**

Schedule 2 of the Bill proposes various amendments to the [Employment Standards Act, 2000](#) including the following:

### **A. Written Policy on Disconnecting from Work**

The Bill proposes a requirement for employers with 25 or more employees to have a written policy in place for all employees with respect to disconnecting from work.

The Bill 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.

The proposed amendment includes a requirement to provide a copy of the policy to employees and that the policy “shall continue such information as may be required” signalling that regulations with further requirements are expected.

So far, the only requirement is for employers to have a policy. The Bill does not include any new mechanisms to enforce the policy that an employer puts in place, nor does it provide any exemptions from the policy.

### **B. Prohibition of Non-Compete Agreements**

The Bill proposes a provision that prohibits an employer from entering into an employment contract or other agreement with an employee that is, or includes, a non-compete agreement. If an employer fails to abide by the provision, the non-compete agreement will be void.



The Bill does provide for an **exception** to the proposed prohibition when there is a sale of a business or a part of a business and, as part of the sale, the purchaser and seller enter into an agreement that prohibits the seller from competing with the purchaser's business after the sale and, immediately following the sale, the seller becomes an employee of the purchaser.

### **C. Licence to Operate as Temporary Help Agency**

The Bill proposes the addition of a section to the Act requiring persons operating as a temporary help agency to hold a licence for that purpose. Coupled with this proposal is the prohibition of clients knowingly engaging or using the services of a temporary help agency that does not hold a licence for that purpose.

### **D. Licence to Act as a Recruiter**

Not unlike the proposed requirement for temporary help agencies, the Bill proposes a requirement to ensure that no person shall act as a recruiter unless they hold a licence for that purpose. Employers and prospective employers will be prohibited from knowingly engaging or using the services of a recruiter that does not hold the required licence.

- **Proposed Changes to the *Employment Protection for Foreign Nationals Act, 2009***

Schedule 1 of the Bill proposes an amendment to the [Employment Protection for Foreign Nationals Act, 2009](#) that serves to remedy a contravention of section 7(1) of the Act.

Section 7(1) currently prohibits persons who act as recruiters in connection with the employment of foreign nationals from charging the foreign national a fee for any service, good, or benefit provided to the foreign national.

The proposed remedy (the amendment): if a recruiter that is a corporation uses the services of another recruiter in connection with the recruitment or employment of a foreign national, the **directors of the recruiter (corporation) are jointly and severally liable to repay fees** charged to the foreign national by the other recruiter.

- **Proposed Changes to the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006***

Schedule 3 of the Bill proposes the following changes:



### **A. Language Proficiency**

The Bill proposes the addition of a section that requires regulated professions to ensure they are complying with regulations with respect to English or French language proficiency testing requirements.

### **B. Canadian Experience**

A section will also be added so that regulated professions cannot require as a qualification for registration that a person's experience be Canadian experience, *unless* an exemption from the prohibition is granted by the Minister for the purposes of public health and safety.

### **C. Supporting Access**

The Bill proposes the addition of a section allowing the Minister to take enumerated steps to support the access of internationally trained individuals to regulated professions.

#### **• Proposed Changes to the *Occupational Health and Safety Act***

Schedule 5 of the Bill proposes a change to the [Occupational Health and Safety Act, 1990](#) to require the owner of a workplace to ensure **access to a washroom is provided, on request, to persons making deliveries** to or from the workplace.

Access to a washroom at a workplace will not be required in the following circumstances:

- If providing access to a washroom **would not be reasonable or practical for reasons relating to the health or safety** of any person at the workplace, including the worker requesting to use a washroom;
- If providing access **would not be reasonable or practical having regard to all the circumstances including** (but not limited to): the nature of the workplace, 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 in the workplace; or
- If the washroom is in, or can only be accessed through, a **dwelling**.

#### **• Proposed Changes to the *Workplace Safety and Insurance Act, 1997***

Schedule 6 of the Bill proposes a noteworthy amendment to the [Workplace Safety and Insurance Act, 1997](#) regarding the **distribution of surplus**. More specifically, if the amount of the insurance fund meets a sufficiency ratio that is equal to or greater than 115% and less than 125%, the Board may distribute any excess amount that it considers appropriate among [Schedule 1](#) employers.



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