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Re: *Working for Workers Act, 2021 Summary*

Bill 27 was tabled for first reading in the provincial legislature on Monday, October 25, 2021. The proposed omnibus legislation, if passed into law, will be titled the *Working for Workers Act, 2021*.

Contacts in the Minister's Office unofficially confirmed the intention of the Government is to pass Bill 27 into law on or before the last of the sitting of the Legislature, December 9, 2021. The legislation's proposed title is apt, given that it is a one-sided, pro-employee, move to reform a number of important aspects of employment law in Ontario.

Bill 27 contains 8 substantive legal changes to various Ontario employment law statutes. The most problematic and "anti-employer" part of bill 27, in the writer's opinion, is Part XV.1 "NON-COMPETE AGREEMENTS", listed as item 2 below.

The 8 proposed substantive legal changes are as follows:

1. **Mandatory Policy on Disconnecting from Work:** Employers with 25 or more employees will be required to develop and distribute a written policy about "disconnecting from work", relating to work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, outside of normal working hours. No actual restrictions, rules or even guidance is provided in Bill 27; however, the propose legislation contemplates that those may be provided in a future regulation.
2. **Non-Competition Agreements:** Employers will be prohibited from imposing non-competition agreements on employees that prevent an employee "*from engaging in any business, work occupation, profession, project or other activity*" that is competitive with the employer's business after the employment relationship between the employee and employer ends. The definition of a "non-competition agreement" in Bill 27 is expansive and a significant intrusion into the common law rule of the freedom of contract. The only statutory exemption is in the context of the sale of a business. Section 67(2)(1) of Bill 27 states: "*No employer shall enter into an employment contract or other agreement with an employee that is, or that includes, a non-*

competition agreement.” It is unclear what the economic harm or policy justification supports such an anti-business statutory intervention in employment relationships.

3. **Licensing for Recruiters and Temporary Help Agencies:** Recruiters and temporary help agencies will be required to apply for and obtain a license to operate in the province for the purpose of protecting “vulnerable employees from being exploited”. The establishment of the regulatory system and regulatory bureaucracy is set out in great detail in Bill 27. A public registry will be established and available of all active, revoked and suspended license holders.
4. **Faster Access for Internationally Trained Professionals:** This change purports to “remove barriers”, previously viewed as essential to verify professional qualifications and protect Canadians, from internationally trained professionals. It is proposed that Canadian experience and proof requirements, for internationally trained individuals to get licensed in a regulated profession and get access to jobs that match their qualifications and skills, will be removed. It is currently unclear in Bill 27 how this will impact the professional standards for MDs, RNs, CPAs and LSO license holders (lawyers and registered paralegals).
5. **Delivery Workers Washroom User Rights:** This will require business owners to allow delivery workers to use a company’s washroom if they are delivering or picking up items at that place of business, under an amendment to the *Occupational Health and Safety Act*.
6. **Redistribution of WSIB Surpluses:** This will amend the *Workplace Safety and Insurance Act* to permit surpluses in the Workplace Safety and Insurance Board’s (“WSIB”) Insurance Fund to be distributed to Ontario businesses, when the surplus is over certain, yet undefined, levels; Ontario businesses fully fund the workers’ compensation system and having been paying a premium over the last decade to reduce the unfunded liability of the WSIB; no details regarding threshold entitlements, the mechanism for providing refunds to employers, amounts of the refund or timing is provided in Bill 27.
7. **WSIB Administrative Efficiency and Income Tracing:** This will allow the WSIB to work with other government entities, like the Canada Revenue Agency (“CRA”), to “streamline remittances for businesses”, submitting premiums, payroll deductions, facilitate cooperation during inquiries, investigations and legal compliance and enforcement.
8. **Collecting and Tracing Agri-Workers:** This change will allow the Ministry of Agriculture, Food and Rural Affairs to collect personal information related to the agri-food workforce to ensure the government can enhance the coordination of services such as vaccination and testing, and other purposes that the Government deems appropriate.

We will continue to monitor the progress of Bill 27 through the legislative process.

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Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

2ND SESSION, 42ND LEGISLATURE, ONTARIO
70 ELIZABETH II, 2021

Bill 27

An Act to amend various statutes with respect to employment and labour and other matters

The Hon. M. McNaughton
Minister of Labour, Training and Skills Development

Government Bill

1st Reading October 25, 2021
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

SCHEDULE 1 EMPLOYMENT PROTECTION FOR FOREIGN NATIONALS ACT, 2009

The *Employment Protection for Foreign Nationals Act, 2009* is amended to provide that a recruiter who uses the services of another recruiter in connection with the recruitment or employment of a foreign national, and if the recruiter who uses those services is a corporation, the directors of that recruiter, are jointly and severally liable to repay fees charged to the foreign national by the other recruiter in contravention of subsection 7 (1) of the Act.

SCHEDULE 2 EMPLOYMENT STANDARDS ACT, 2000

The Schedule amends the *Employment Standards Act, 2000*. New Part VII.0.1 of the Act imposes a requirement on employers that employ 25 or more employees to have a written policy with respect to disconnecting from work. The term “disconnecting from work” is defined to mean 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.

New Part XV.1 of the Act prohibits employers from entering into employment contracts or other agreements with an employee that are, or that include, a non-compete agreement. Certain exceptions are provided for.

Part XVIII.1 of the Act is amended to include licensing requirements for temporary help agencies and recruiters. Here are some highlights:

New sections 74.1.1 and 74.1.2 prohibit persons from operating as a temporary help agency or acting as a recruiter without a licence for that purpose. A prohibition against knowingly engaging or using the services of an unlicensed temporary help agency or recruiter is also included.

The Director has authority with respect to issuing licences and revoking and suspending licences, subject to appeal powers given to the Ontario Labour Relations Board.

The Director is required to publish and maintain a record of information related to licensing under Part XVIII.1.

New section 74.12.1 prohibits a recruiter or person acting on behalf of a recruiter from taking reprisals against prospective employees on a variety of grounds, such as asking the recruiter to comply with the Act.

Related amendments are made to the Act and provision is also made for regulations to be made by the Lieutenant Governor in Council.

Subsection 97 (3) and paragraph 2 of subsection 100 (4) of the Act are repealed.

SCHEDULE 3 FAIR ACCESS TO REGULATED PROFESSIONS AND COMPULSORY TRADES ACT, 2006

The *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* is amended in respect of various matters, including the following:

Regulated professions are required to ensure they comply with any regulations respecting English or French language proficiency testing requirements. Regulated professions are also prohibited from including Canadian experience requirements as qualifications for registration unless an exemption from the prohibition is granted. Compliance orders may be issued if a regulated profession imposes requirements that are prohibited under the Act.

A section is added describing some ways in which the Minister may support the access of internationally trained individuals to regulated professions and providing that the Minister may make related grants.

Various related amendments are made, including to the regulation-making powers.

SCHEDULE 4 MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS ACT

Section 4 of the *Ministry of Agriculture, Food and Rural Affairs Act* is amended to provide that the Ministry may review matters related to agriculture, food and rural affairs and establish policies and provide recommendations, advice, coordination and assistance to the Government in matters related to agriculture, food and rural affairs.

New section 4.1 of the Act authorizes the Minister to collect information, including personal information, for the purposes set out in the section. The section sets out limits with respect to the collection, use and disclosure of personal information. Regulation-making powers are provided for.

**SCHEDULE 5
OCCUPATIONAL HEALTH AND SAFETY ACT**

The *Occupational Health and Safety Act* is amended to require the owner of a workplace to provide access to a washroom to persons making deliveries to or from the workplace. Exceptions are provided for.

**SCHEDULE 6
WORKPLACE SAFETY AND INSURANCE ACT, 1997**

The Schedule amends the *Workplace Safety and Insurance Act, 1997* with respect to the insurance fund.

Section 96.1 of the Act and subsection 97 (2) of the Act are repealed.

New section 97.1 provides that, in certain circumstances, the Board is permitted or required to distribute amounts in the insurance fund in excess of prescribed amounts among Schedule 1 employers. New section 97.2 provides that a determination made by the Board under section 97.1 cannot be reconsidered by, or appealed to, the Board or the Tribunal. Related regulation-making authorities are added to section 100.

Section 159 of the Act is amended to provide that the Board may enter into an agreement with any person or entity for the purpose of administering Part VII (Employers and their Obligations).

**An Act to amend various statutes with respect to
employment and labour and other matters**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Working for Workers Act, 2021*.

**SCHEDULE 1
EMPLOYMENT PROTECTION FOR FOREIGN NATIONALS ACT, 2009**

1 The heading before section 17 of the *Employment Protection for Foreign Nationals Act, 2009* is amended by adding “and Recruiters” at the end.

2 Section 17 of the Act is amended by striking out “and 19” wherever it appears and substituting in each case “18.1 and 19”.

3 The Act is amended by adding the following section:

Recruiters’ liability to repay fees, etc.

18.1 (1) A recruiter who uses the services of another recruiter in connection with the recruitment or employment of a foreign national, and if the recruiter who uses those services is a corporation, the directors of that recruiter, are jointly and severally liable to repay fees charged to the foreign national by the other recruiter in contravention of subsection 7 (1).

Primary responsibility

(2) Despite subsection (1), the recruiter that charged the fee is primarily responsible to repay the fee, but proceedings against the recruiter that charged the fee do not have to be exhausted before proceedings may be commenced to collect the fees from the other recruiter and the directors, if any.

Contribution from other directors

(3) A director who has satisfied a claim to repay fees is entitled to contribution in relation to the repaid fees from other directors who are liable for the claim.

Limitation periods

(4) A limitation period established under section 28 prevails over a limitation period in any other Act, unless the other Act states that it is to prevail over this Act.

Order to repay fees

(5) For the purposes of enforcing this section, an employment standards officer may make an order in respect of both recruiters and the directors, if any, described in subsection (1), and subsections 24 (2) and (7) apply with necessary modifications.

Commencement

4 This Schedule comes into force on the day the *Working for Workers Act, 2021* receives Royal Assent.

**SCHEDULE 2
EMPLOYMENT STANDARDS ACT, 2000**

1 Subsection 1 (1) of the *Employment Standards Act, 2000* is amended by adding the following definitions:

“licence” means a licence issued under Part XVIII.1; (“permis”)

“recruiter” has the meaning set out in the regulations; (“recruteur”)

2 Section 15 of the Act is amended by adding the following subsection:

Retention of disconnecting from work policies

(8.1) An employer shall retain or arrange for some other person to retain copies of every written policy on disconnecting from work required under Part VII.0.1 for three years after the policy ceases to be in effect.

3 The Act is amended by adding the following Part:

**PART VII.0.1
WRITTEN POLICY ON DISCONNECTING FROM WORK**

Interpretation

21.1.1 In this Part,

“disconnecting from work” means 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.

Written policy on disconnecting from work

21.1.2 (1) An employer that, on January 1 of any year, employs 25 or more employees shall, before March 1 of that year, ensure it has a written policy in place for all employees with respect to disconnecting from work that includes the date the policy was prepared and the date any changes were made to the policy.

Copy of policy

(2) An employer shall provide a copy of the written policy with respect to disconnecting from work to each of the employer’s employees within 30 days of preparing the policy or, if an existing written policy is changed, within 30 days of the changes being made.

Same

(3) An employer shall provide a copy of the written policy with respect to disconnecting from work that applies to a new employee within 30 days of the day the employee becomes an employee of the employer.

Prescribed information

(4) A written policy required under subsection (1) shall contain such information as may be prescribed.

Transition

(5) Despite subsection (1), an employer shall,

(a) have until the date that is six months after the day the *Working for Workers Act, 2021* receives Royal Assent instead of March 1 to comply with the requirements of subsection (1); and

(b) determine whether it employs 25 employees or more as of the January 1 immediately preceding the date described in clause (a).

4 The Act is amended by adding the following Part:

**PART XV.1
NON-COMPETE AGREEMENTS**

Definitions

67.1 In this Part, and for the purposes of Part XVIII (Reprisal), section 74.12, Part XXI (Who Enforces this Act and What They Can Do), Part XXII (Complaints and Enforcement), Part XXIII (Reviews by the Board), Part XXIV (Collection), Part XXV (Offences and Prosecutions), Part XXVI (Miscellaneous Evidentiary Provisions) and Part XXVII (Regulations) insofar as matters concerning this Part are concerned,

“employee” means an employee as defined in subsection 1 (1) and includes an applicant for employment; (“employé”)

“employer” means an employer as defined in subsection 1 (1) and includes a prospective employer; (“employeur”)

“non-compete agreement” means 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. ("clause de non-concurrence")

Prohibition

67.2 (1) No employer shall enter into an employment contract or other agreement with an employee that is, or that includes, a non-compete agreement.

Same

(2) For greater certainty, subsection 5 (1) applies and if an employer contravenes subsection (1), the non-compete agreement is void.

Exception — sale, etc., of business

(3) If there is a sale of a business or a part of a business and, as a part of the sale, the purchaser and seller 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, immediately following the sale, the seller becomes an employee of the purchaser, subsection (1) does not apply with respect to that agreement.

Definition

(4) In this section,

"sale" includes a lease.

5 Clause 74 (1) (a) of the Act is amended by striking out "or" at the end of subclause (viii) and by adding the following subclause:

- (ix) makes inquiries about whether a person holds a licence to operate as a temporary help agency or a licence to act as a recruiter as required under Part XVIII.1; or

6 The heading to Part XVIII.1 of Act is amended by adding "AND RECRUITERS" at the end.

7 Part XVIII.1 of the Act is amended by striking out the heading "Interpretation and Application".

8 The Act is amended by adding the following section:

LICENSING

Types of licences

74.1 The following are the types of licences that may be issued under this Part:

1. A licence to operate as a temporary help agency.
2. A licence to act as a recruiter.

9 The Act is amended by adding the following sections:

Licence to operate as temporary help agency

74.1.1 (1) No person shall operate as a temporary help agency unless the person holds a licence for that purpose.

Same

(2) No client shall knowingly engage or use the services of a temporary help agency unless the person who operates the temporary help agency holds a licence for that purpose as required under subsection (1).

Licence to act as recruiter

74.1.2 (1) No person shall act as a recruiter unless the person holds a licence for that purpose.

Same

(2) No employer or prospective employer shall knowingly engage or use the services of a recruiter unless the recruiter holds a licence for that purpose as required under subsection (1).

10 The Act is amended by adding the following sections:

Application for licence

74.1.3 (1) A person may apply to the Director for a licence or a renewal of a licence by,

- (a) submitting to the Director, in a written or electronic form approved by the Director,
 - (i) the legal name of the applicant, as well as any operating or business name of the applicant, if different from the legal name,
 - (ii) the address of every location where the applicant carries on business,

- (iii) if the applicant is a corporation, the name and address of each officer or director of the corporation,
- (iv) if the applicant is a partnership, the name and address of each partner in the partnership,
- (v) if the applicant engages or uses the services of any person, other than an employee of the applicant, in connection with the recruitment or employment of foreign nationals, as defined in the *Employment Protection for Foreign Nationals Act, 2009*, the name and address of each person so engaged or used and a description of the person's business, and
- (vi) such other information as may be prescribed;
- (b) paying such fees as may be prescribed;
- (c) providing the Director with such security as may be prescribed; and
- (d) complying with any additional prescribed requirements.

Request for information

(2) The Director may request that an applicant provide to the Director, in the form and within the time period specified by the Director, such information as may be specified by the Director that is relevant to the decision as to whether or not to issue a licence or renewal.

False or misleading information

(3) No person shall provide false or misleading information under this section.

Addresses

(4) For greater certainty, a requirement to submit an address to the Director under subsection (1) includes addresses in Ontario and outside of Ontario, including outside of Canada.

Issuance of licence

74.1.4 The Director shall issue a licence to an applicant or renew an applicant's licence if the Director,

- (a) receives an application under section 74.1.3; and
- (b) is satisfied that the applicant,
 - (i) has complied with any orders issued under this Act or the *Employment Protection for Foreign Nationals Act, 2009*, and
 - (ii) meets the requirements set out in this Act and the regulations for the licence.

Refusal to issue or renew licence

74.1.5 (1) On receipt of an application under section 74.1.3, the Director shall, in accordance with the prescribed processes, if any, refuse to issue or renew a licence if,

- (a) the applicant has not complied with an order issued under this Act or the *Employment Protection for Foreign Nationals Act, 2009*;
- (b) the applicant fails to meet the requirements set out in this Act and the regulations for the licence; or
- (c) any other prescribed circumstances exist.

Same

(2) On receipt of an application under section 74.1.3, the Director may, in accordance with the prescribed processes, if any, refuse to issue or renew a licence if,

- (a) the Director has reasonable grounds to believe that,
 - (i) 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
 - (ii) 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; or
- (b) any other prescribed circumstances exist.

Revocation or suspension of licence

74.1.6 (1) The Director may, in accordance with the prescribed processes, if any, revoke or suspend a licence on any ground on which the Director might have refused to issue or renew the licence under subsection 74.1.5 (1) or (2).

Reinstatement

(2) If the Director considers it appropriate to do so, the Director may reinstate a licence that has been suspended.

Notice requirements re: licences**Director**

74.1.7 (1) If the Director refuses to issue or renew a licence, or revokes or suspends a licence, the Director shall serve notice of the refusal, revocation or suspension on the applicant and shall provide the applicant with written reasons for the refusal, revocation or suspension.

Temporary help agency

(2) A person whose licence to operate a temporary help agency is refused, revoked or suspended shall give written notice of the refusal, revocation or suspension to every client and assignment employee of the agency within 30 days after the day on which the notice of refusal, revocation or suspension is served.

Recruiter

(3) A person whose licence to act as a recruiter is refused, revoked or suspended shall give written notice of the refusal, revocation or suspension to every employer, prospective employer or prospective employee who has engaged or used the services of the recruiter within 30 days after the day on which the notice of refusal, revocation or suspension is served.

Applicant for review

(4) If a person applies for an application for review under subsection 74.1.13 (1), the person shall include that information in the notice required under subsection (2) or (3) of this section.

Terms and conditions of licence

74.1.8 A licence is subject to such terms and conditions as are prescribed.

Licence not transferable

74.1.9 A licence is not transferable.

Expiry of licence

74.1.10 (1) Subject to subsection (2), a licence expires one year after the date it was issued or renewed or on the expiration of such longer period as may be prescribed.

Same, renewal application

(2) If, before a person's licence expires, the person applies for a licence renewal in accordance with section 74.1.3, the licence remains valid until the licence is renewed or notice of the refusal to renew the licence is served.

Voluntary cancellation

74.1.11 (1) The Director may cancel a licence upon the request, in writing, of the licensee.

Same, notice

(2) Subsections 74.1.7 (2) and (3) apply with necessary modifications if a licence is cancelled under this section.

Public record

74.1.12 (1) The Director shall publish and maintain, in accordance with such requirements as may be prescribed, a public record of the following on a website of the Government of Ontario:

1. The name of every person licensed under this Act, the date the person's licence was issued or renewed and the date the person's licence expires.
2. The name of every person whose licence has been revoked or suspended under this Act and the date of the revocation or suspension.
3. Any other prescribed information.

Freedom of information legislation

(2) The disclosure of personal information in a public record under this section is deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*.

Application for review

74.1.13 (1) A person whose application for a licence has been refused under section 74.1.5 or whose licence has been revoked or suspended under section 74.1.6 is entitled to a review of the refusal, revocation or suspension by the Board if the person applies to the Board, in writing, for a review within the period set out in subsection (2).

Period for applying for review

(2) An application for a review under subsection (1) shall be made within 30 days after the day on which notice of the refusal, revocation or suspension is served.

Hearing

(3) Subject to subsection 118 (2), the Board shall hold a hearing for the purposes of the review.

Same, timelines

(4) A review hearing shall be conducted in accordance with any timelines prescribed.

Parties

(5) The parties to the review are the applicant for review and the Director.

Powers of Board

(6) The Board may, with necessary modifications, exercise the powers conferred on the Director under this Part and may substitute its findings for those of the Director.

Same

(7) Without limiting the generality of subsection (6), on a review under this section, the Board may uphold the Director's decision, vary or set aside the Director's decision or issue, renew or reinstate a licence.

Notice of decision

(8) If the Board upholds the Director's decision to refuse to issue or renew, or to revoke or suspend, a person's licence to operate a temporary help agency, the person shall give written notice of the refusal, revocation or suspension to every client and assignment employee of the agency within 30 days after the Board issues its decision.

Same

(9) If the Board upholds the Director's decision to refuse to issue or renew, or to revoke or suspend, a person's licence to act as a recruiter, the person shall give written notice of the refusal, revocation or suspension to every employer, prospective employer and prospective employee who has engaged or used the services of the recruiter within 30 days after the Board issues its decision.

Certain review provisions applicable

(10) Subsections 116 (8) and (9), section 118 and subsections 119 (3), (4), (5), (13) and (14) apply, with necessary modifications, to a review under this section.

Further application

74.1.14 No applicant who is refused a licence or renewal of a licence or whose licence is revoked may apply to the Director for a licence unless,

- (a) at least two years have passed since the refusal or revocation; or
- (b) the applicant satisfies the Director that new evidence is available.

Director's authorization

74.1.15 (1) The Director may authorize an individual employed in the Ministry to exercise a power conferred on the Director under sections 74.1 to 74.1.14, either orally or in writing.

Residual power

(2) The Director may exercise a power conferred on the Director under sections 74.1 to 74.1.14 even if the Director has delegated it to an individual under subsection (1).

Duty re: policies

(3) An individual authorized by the Director under subsection (1) shall follow any policies established by the Director under subsection 88 (2).

11 The Act is amended by adding the following section:

INTERPRETATION AND APPLICATION

Definitions

74.2 For the purposes of sections 5, 102 and 102.1, Part XXVII (Regulations) and such other sections of this Act as may be prescribed insofar as matters concerning this Part are concerned,

“employee” means an employee as defined in subsection 1 (1) and includes a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario; (“employé”)

“employer” means an employer as defined in subsection 1 (1) and includes a client of a temporary help agency, a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee. (“employeur”)

12 Section 74.2.1 of the Act is amended by adding “Unless otherwise prescribed” at the beginning.

13 Subsection 74.4.2 (1) of the Act is repealed and the following substituted:

Client to keep records re: work for client

- (1) A client of a temporary help agency shall record the following information:
1. The name of each assignment employee assigned to perform work for the client.
 2. The number of hours worked by each assignment employee assigned to perform work for the client in each day and each week.

14 The Act is amended by adding the following section:

Recruiters to keep records

74.4.3 (1) A recruiter shall record the following information:

1. The name of each prospective employee who uses the recruiter to find or attempt to find employment.
2. The name and address of each employer or prospective employer who has engaged or used the services of the recruiter.
3. Such other information as may be prescribed.

Records retention

(2) The recruiter shall retain or arrange for some other person to retain the records required under subsection (1) for three years after the recruiter ceases to provide services to the prospective employee, employer or prospective employer.

Availability for inspection

(3) The recruiter shall ensure that the records required to be retained under this section are readily available for inspection as required by an employment standards officer, even if the recruiter has arranged for another person to retain them.

15 Section 74.8 of the Act is amended by adding the following subsection:

Same

- (3.1) Subsection (2) does not apply if the Director,
- (a) refuses to issue or renew a licence under section 74.1.5 and the client enters into an employment relationship with the employee after the refusal;
 - (b) revokes the licence to operate the temporary help agency under section 74.1.6 and the client enters into an employment relationship with the assignment employee after the revocation;
 - (c) suspends the licence to operate the temporary help agency under section 74.1.6 and the client enters into an employment relationship with the assignment employee while the licence is suspended; or
 - (d) cancels the licence under section 74.1.11 and the client enters into an employment relationship with the assignment employee after the cancellation.

16 Section 74.10.1 of the Act is amended by adding the following subsection:

Same

(5) For greater certainty, for the purposes of clause (4) (b), if an assignment is terminated because the Director has refused to issue or renew, or has revoked or suspended, a licence to operate a temporary help agency under section 74.1.5 or 74.1.6, the assignment has not become impossible to perform or been frustrated by a fortuitous or unforeseeable event or circumstance.

17 Clause 74.12 (1) (a) of the Act is amended by striking out “or” at the end of subclause (viii) and by adding the following subclause:

- (ix) makes inquiries about whether a person holds a licence to operate as a temporary help agency or a licence to act as a recruiter as required under Part XVIII.1; or

18 The Act is amended by adding the following section immediately before the heading “Enforcement”:

REPRISAL BY RECRUITER

Reprisal by recruiter prohibited

74.12.1 (1) No recruiter or person acting on behalf of a recruiter shall intimidate or penalize, or attempt or threaten to intimidate or penalize, a prospective employee who engages or uses the services of the recruiter because the prospective employee,

- (a) asks the recruiter to comply with this Act and the regulations;
- (b) gives information to an employment standards officer;
- (c) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act; or

(d) makes inquiries about whether a person holds a licence to operate as a temporary help agency or a licence to act as a recruiter as required under Part XVIII.1.

(2) Subject to subsection 122 (4), in any proceeding under this Act, the burden of proof that a recruiter did not contravene a provision set out in this section lies upon the recruiter.

19 The Act is amended by adding the following section:

Order re: recruiter reprisal

74.19 (1) If an employment standards officer finds that section 74.12.1 has been contravened with respect to a prospective employee who engages or uses the services of a recruiter, the officer may order that the prospective employee be compensated for any loss incurred as a result of the contravention.

Terms of order

(2) If an order issued under this section requires the recruiter to compensate a prospective employee that has engaged or used the services of the recruiter, it shall also require the recruiter to,

(a) pay to the Director in trust,

(i) the amount of the compensation, and

(ii) an amount for administration costs equal to the greater of \$100 and 10 per cent of the amount of compensation; or

(b) pay the amount of the compensation to the prospective employee.

Application of s. 103 (3) to (9)

(3) Subsections 103 (3) to (9) apply with respect to orders issued under this section with necessary modifications, including but not limited to the following:

1. A reference to an employer is a reference to a recruiter.

2. A reference to an employee is a reference to a prospective employee that has engaged or used the services of a recruiter.

20 Subsection 97 (3) of the Act is repealed.

21 Paragraph 2 of subsection 100 (4) of the Act is repealed.

22 (1) Subsection 108 (3) of the Act is amended by adding “74.19” after “74.17”.

(2) Paragraph 1 of subsection 108 (4) of the Act is amended by adding “a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee” at the end.

(3) Paragraph 2 of subsection 108 (4) of the Act is amended by striking out “or prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”.

23 Subsection 109 (1) of the Act is amended by adding “74.19” after “74.17”.

24 Subsection 110 (1) of the Act is amended by adding “74.19” after “74.17”.

25 (1) Section 112 of the Act is amended by adding the following subsection:

Same

(7.1) For greater certainty, no person shall enter into a settlement that would permit or require a temporary help agency or recruiter to operate or continue to operate without a licence in contravention of this Act.

(2) Paragraph 1 of subsection 112 (9) of the Act is amended by adding “a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee” at the end.

(3) Paragraph 2 of subsection 112 (9) of the Act is amended by striking out “or prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”.

26 Subsection 113 (7) of the Act is amended by adding “74.19” after “74.17”.

(1) Paragraph 1 of subsection 114 (6) of the Act is amended by adding “a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee” at the end.

(2) Paragraph 2 of subsection 114 (6) of the Act is amended by striking out “or prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”.

(1) Paragraph 1 of subsection 115 (1.1) of the Act is amended by adding “a recruiter or a prospective employer who engages or uses the services of a recruiter to find or attempt to find an employee” at the end.

(2) Paragraph 2 of subsection 115 (1.1) of the Act is amended by striking out “or prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”.

29 Section 115.1 of the Act is amended by striking out “or a prospective assignment employee” at the end and substituting “a prospective assignment employee or a prospective employee who engages or uses the services of a recruiter to find employment in Ontario”.

30 Section 116 of the Act is amended by adding “74.19” after “74.17” wherever it appears.

31 Subsection 129 (3) of the Act is amended by adding “74.19” after “74.17”.

32 Subsection 133 (1) of the Act is repealed and the following substituted:

Additional orders

(1) If an employer is convicted under section 132 of contravening section 74 or paragraph 4, 6, 7 or 10 of subsection 74.8 (1), if a client is convicted under section 132 of contravening section 74.12 or if a recruiter is convicted under section 132 of contravening section 74.12.1, the court shall, in addition to any fine or term of imprisonment that is imposed, order that the employer, client or recruiter, as the case may be, take specific action or refrain from taking specific action to remedy the contravention.

33 (1) Section 141 of the Act is amended by adding the following subsection:

Transitional regulations

(2.0.3.5) The Lieutenant Governor in Council may make regulations providing for any transitional matter that the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of the amendments made by the *Working for Workers Act, 2021*.

(2) Subsection 141 (2.0.4) of the Act is amended by striking out “or (2.0.3.4)” wherever it appears and substituting in each case “(2.0.3.4) or (2.0.3.5)”.

(3) Section 141 of the Act is amended by adding the following subsections:

Regulations re: Part XVIII.1

(2.6) The Lieutenant Governor in Council may make regulations respecting the licensing of temporary help agencies and recruiters under Part XVIII.1 (Temporary Help Agencies and Recruiters), and without restricting the generality of the foregoing, may make regulations,

- (a) governing requirements for the issuance or renewal of a licence, including requirements relating to compliance with laws that apply to the applicant;
- (b) governing applications for the issuance or renewal of a licence including requiring information to be provided for different types of licences, which may include information about compliance with laws that apply to the applicant;
- (c) prescribing circumstances in which an application for the issuance or renewal of a licence may be refused, which may include non-compliance with laws that apply to the applicant;
- (d) prescribing circumstances in which a licence may be revoked or suspended, which may include non-compliance with laws that apply to the applicant;
- (e) prescribing the processes to be followed by the Director in refusing to issue or renew a licence under section 74.1.5, which shall include providing an applicant with an opportunity to show evidence of compliance with licensing requirements before the licence or renewal is refused;
- (f) prescribing the processes to be followed by the Director in revoking or suspending a licence under section 74.1.6, which shall include providing an applicant with an opportunity to show evidence of compliance with licensing requirements before the licence is revoked or suspended;
- (g) governing the terms and conditions of licences;
- (h) governing licensing fees, including prescribing the amount of fees or the manner of determining fees, and prescribing the manner in which and the period within which fees must be paid;
- (i) governing security for licensing, including prescribing the amount of security and prescribing the manner in which and the method by which security must be provided to the Director and the uses for which security may be used, including to satisfy obligations owing under this Act or under the *Employment Protection for Foreign Nationals Act, 2009*;
- (j) governing the public record that the Director is required to publish and maintain under section 74.1.12;
- (k) prescribing timelines for the purposes of review hearings held under section 74.1.13 and providing that the Board may grant extensions to those timelines;
- (l) governing the application of Part XVIII.1 for the purposes of section 74.2.1.

Same, retroactive regulations

(2.7) A regulation made under paragraph 3 of subsection (1) in respect of the application of Part XVIII.1 is, if it so provides, effective with reference to a period before it is filed.

Commencement

34 (1) Subject to subsections (2) and (3), this Schedule comes into force on the day the *Working for Workers Act, 2021* receives Royal Assent.

(2) Sections 1, 5 to 19 and 22 to 32 and subsection 33 (3) come into force on a day to be named by proclamation of the Lieutenant Governor.

(3) Section 4 is deemed to have come into force on October 25, 2021.

SCHEDULE 3
FAIR ACCESS TO REGULATED PROFESSIONS AND COMPULSORY TRADES ACT, 2006

1 (1) The definition of “Access Centre” in section 2 of the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* is repealed.

(2) Section 2 of the Act is amended by adding the following definition:

“Canadian experience” has the meaning prescribed by the regulations; (“expérience canadienne”)

(3) The definition of “compulsory trade” in section 2 of the Act is repealed.

(4) Section 2 of the Act is amended by adding the following definition:

“Ministry” means the Ministry of the Minister; (“ministère”)

2 Section 4 of the Act is amended by adding the following subsections:

Delegation of powers

(2) Any power or duty conferred or imposed on the Minister under section 10.2 or 27.1 may be delegated by the Minister to the Fairness Commissioner or any person employed in the Ministry and, when purporting to exercise a delegated power or duty, the delegate shall be presumed conclusively to act in accordance with the delegation.

Delegation subject to conditions

(3) A delegation under subsection (2) shall be in writing and may be subject to such limitations, conditions and requirements as are set out in it.

3 Subsection 5 (2) of the Act is repealed and the following substituted:

Compulsory trades

(2) This Act applies to Skilled Trades Ontario in respect of compulsory trades as defined in the *Building Opportunities in the Skilled Trades Act, 2021*, in the same manner and to the same extent as if a reference in this Act to a regulated profession were a reference to Skilled Trades Ontario.

4 Section 8 of the Act is amended by adding the following subsection:

Expedited processes in case of emergency

(2) A regulated profession shall ensure that, in case of emergency, it complies with any regulations respecting expedited registration processes that may apply.

5 The Act is amended by adding the following sections:

Language proficiency

10.1 A regulated profession shall ensure that it complies with any regulations respecting English or French language proficiency testing requirements.

Canadian experience

10.2 (1) A regulated profession shall not 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 in accordance with the regulations.

Application for exemption

(2) A regulated profession may apply for an exemption referred to in subsection (1) by submitting appropriate supporting documentation and providing reasons that an exemption is necessary for the purposes of public health and safety.

Same

(3) An application referred to in subsection (2) shall include the information prescribed by the regulations, if any, and be submitted in accordance with the procedures prescribed by the regulations.

Review of application

(4) The Fairness Commissioner shall review an application for an exemption and make a recommendation to the Minister as to whether the exemption should be permitted.

Determination by Minister

(5) The Minister shall determine whether to grant the exemption.

Same

(6) Subject to subsection (7), if a regulated profession has a requirement described in subsection (1) contrary to that subsection more than two years after the day section 5 of Schedule 3 to the *Working for Workers Act, 2021* comes into force, the requirement is deemed to be void on and after that day.

Temporary exemption

(7) The Minister may grant a temporary exemption from the prohibition in subsection (1) during the period that the Minister is considering an application for exemption.

6 Part V of the Act is repealed and the following substituted:**PART V****SUPPORTING ACCESS OF INTERNATIONALLY TRAINED INDIVIDUALS TO REGULATED PROFESSIONS****Supporting access**

17 (1) For the purposes of the administration of this Act, the Minister may support the access of internationally trained individuals to regulated professions by, for example,

- (a) providing 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;
- (b) conducting research, analyzing trends and identifying issues related to the purposes of this Act or to the registration of internationally trained individuals by regulated professions; and
- (c) providing 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.

Same

(2) The Minister may make grants for the purposes of subsection (1) on such terms as may be prescribed by the regulations and on such other terms as the Minister considers proper.

7 (1) **Subsection 26 (2) of the Act is amended by adding “Subject to subsection (3)” at the beginning.**

(2) Section 26 of the Act is amended by adding the following subsection:

Order re language proficiency

(3) If the Fairness Commissioner concludes that a regulation or by-law made by a regulated profession includes an English or French language proficiency testing requirement that contravenes the regulations made under this Act, the Fairness Commissioner may make an order under subsection (1) requiring the regulated profession to exercise any power or powers that it has to amend or revoke the regulation or by-law made by the regulated profession.

8 The Act is amended by adding the following section:

Compliance orders, Minister

27.1 If the Minister concludes that a regulation or by-law made by a regulated profession includes a Canadian experience requirement contrary to subsection 10.2 (1), the Minister may make an order requiring the regulated profession to exercise any power or powers that it has to amend or revoke the regulation or by-law.

9 Section 28 of the Act is amended by adding “or Minister” after “Fairness Commissioner”.

10 Subsection 29 (2) of the Act is amended by adding “or Minister” after “Fairness Commissioner”.

11 Section 31 of the Act is amended by adding the following subsection:

Authority to make regulations or by-laws

(2) A regulated profession’s authority under any other Act to make regulations or by-laws is subject to this Act.

12 Subsection 32 (1) of the Act is repealed and the following substituted:

Immunity

(1) No proceeding shall be commenced against the Fairness Commissioner or anyone employed in the Office of the Fairness Commissioner for any act done or omitted in good faith in the execution or intended execution of his or her duties under this Act.

Same

(1.1) No proceeding shall be commenced against anyone employed in the Ministry who provides support to the Minister under section 17 for any act done or omitted in good faith in the execution or intended execution of their duties.

13 Section 33 of the Act is amended by striking out “nor anyone employed under section 18” at the end of the portion before clause (a) and substituting “nor anyone employed in the Ministry who provides support to the Minister under section 17”.

14 (1) Clause 34 (1) (c) of the Act is repealed and the following substituted:

- (c) establishing time limits for compliance with any provision or provisions of this Act or the regulations, including establishing a maximum time period within which a regulated profession shall make a decision;
- (c.1) requiring regulated professions to implement expedited registration processes in case of emergency and governing the expedited registration processes;
- (c.2) governing English or French language proficiency testing requirements that shall be applicable to individuals applying for registration by regulated professions, including prescribing what constitutes an English or French language proficiency testing requirement for the purposes of the Act and the regulations;
- (c.3) governing applications for an exemption from the prohibition relating to Canadian experience described in subsection 10.2 (1), including prescribing the procedures for applying for an exemption, the person or body to whom such an application must be made, the information that shall be included in an application, and when an exemption is necessary for the purposes of public health and safety;
- (c.4) governing procedures for making an order under section 27.1:

(2) Clause 34 (1) (f) of the Act is repealed and the following substituted:

- (f) respecting the powers of the Fairness Commissioner;

(3) Clause 34 (1) (j.1) of the Act is repealed and the following substituted:

- (j.1) varying this Act as it applies to compulsory trades, as defined in the *Building Opportunities in the Skilled Trades Act, 2021*, in such manner as the Lieutenant Governor in Council considers necessary in order to ensure the effective administration and enforcement of this Act in relation to compulsory trades;

Commencement

15 (1) Subject to subsection (2), this Schedule comes into force on the day the *Working for Workers Act, 2021* receives Royal Assent.

(2) Subsection 1 (3), section 3 and subsection 14 (3) come into force on the later of the day subsection 38 (1) of the *Building Opportunities in the Skilled Trades Act, 2021* comes into force and the day the *Working for Workers Act, 2021* receives Royal Assent.

SCHEDULE 4
MINISTRY OF AGRICULTURE, FOOD AND RURAL AFFAIRS ACT

1 Section 4 of the *Ministry of Agriculture, Food and Rural Affairs Act* is amended by adding the following subsection:

Functions of Minister

- (2) The Minister may,
- (a) review matters related to agriculture, food and rural affairs; and
 - (b) establish policies and provide recommendations, advice, coordination and assistance to the Government in matters related to agriculture, food and rural affairs.

2 The Act is amended by adding the following section:

Collection and use of information

4.1 (1) In this section,

“personal information” means personal information within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act*.

Collection, use

(2) Subject to the regulations, the Minister may collect information, including personal information, directly or indirectly, for the following purposes and may use it for those purposes:

1. To exercise the powers and carry out the functions set out in section 4.
2. To support Canadian, provincial or municipal responses to urgent public health or public safety concerns related to agriculture, food or rural affairs.
3. To plan for or respond to emergencies related to agriculture, food or rural affairs.
4. To further such purposes related to agriculture, food or rural affairs as may be prescribed for the purpose of this subsection.

Limits, personal information

(3) The Minister shall not collect, use or disclose personal information if other information will serve the purpose of the collection, use or disclosure.

Same

(4) The Minister shall not collect, use or disclose more personal information than is reasonably necessary to serve the purpose of the collection, use or disclosure.

Notice required by s. 39 (2) of FIPPA

(5) If the Minister collects personal information indirectly under subsection (2), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* is given by,

- (a) a public notice posted on the Government of Ontario’s website; or
- (b) any other method that may be prescribed by regulation.

Regulations

- (6) The Lieutenant Governor in Council may make regulations,
- (a) prescribing purposes for the purposes of subsection (2);
 - (b) prescribing methods of giving the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act*;
 - (c) prescribing limitations or restrictions on the collection or use of information.

Commencement

3 This Schedule comes into force on the day the *Working for Workers Act, 2021* receives Royal Assent.

SCHEDULE 5
OCCUPATIONAL HEALTH AND SAFETY ACT

1 The *Occupational Health and Safety Act* is amended by adding the following section:

Duties of owners — washroom access

29.1 (1) Subject to subsection (2), the owner of a workplace shall ensure that access to a washroom is provided, on request, to a worker who is present at the workplace to deliver anything to the workplace, or to collect anything from the workplace for delivery elsewhere.

Exceptions

- (2) Access to a washroom at a workplace is not required under subsection (1),
- (a) if 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) 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, 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) if the washroom is in, or can only be accessed through, a dwelling.

Commencement

2 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

**SCHEDULE 6
WORKPLACE SAFETY AND INSURANCE ACT, 1997**

1 Section 96.1 of the *Workplace Safety and Insurance Act, 1997* is repealed.

2 Subsection 97 (2) of the Act is repealed.

3 The Act is amended by adding the following sections:

Distribution of surplus

97.1 (1) If the amount of the insurance fund meets a sufficiency ratio that is equal to or greater than 115 per cent and less than 125 per cent, the Board may distribute any amount in excess of the amount prescribed under clause 100 (c) that it considers appropriate among Schedule 1 employers having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate.

Same

(2) Except in such circumstances as may be prescribed, if the amount of the insurance fund meets a sufficiency ratio that is equal to 125 per cent,

- (a) the Board shall distribute the difference in the amount prescribed under clause 100 (f.1) and the amount in the insurance fund among Schedule 1 employers; or
- (b) if no amount is prescribed under clause 100 (f.1), the Board shall distribute any amount in excess of the amount prescribed under clause 100 (c) that it considers appropriate among Schedule 1 employers having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate.

Distribution of different amounts

(3) The Board may determine that Schedule 1 employers are to be distributed different amounts under this section having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate, including an employer's compliance with this Act.

No distribution

(4) The Board may determine that a Schedule 1 employer is not to be distributed an amount under this section having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate, including an employer's compliance with this Act.

Timing of disbursements

(5) Subject to such requirements as may be prescribed, the Board may determine the timing of disbursements made under this section and may distribute amounts to different Schedule 1 employers at different times.

Form of disbursements

(6) The Board may determine the form of disbursements made under this section.

Same

(7) The Board may distribute an amount to a Schedule 1 employer under this section in more than one disbursement.

Determination of amount in fund

(8) For the purposes of this section, the sufficiency ratio of the insurance fund shall be calculated in accordance with the method prescribed under clause 100 (f.5).

No right of reconsideration or appeal

97.2 A determination made by the Board regarding distributions or disbursements under section 97.1 is not a decision or a final decision of the Board for the purposes of Part XI of this Act and an employer has no right of reconsideration by, or appeal to, the Board or the Tribunal in respect of a determination made by the Board under that section.

4 (1) Clauses 100 (b), (c) and (d) of the Act are repealed and the following substituted:

- (b) prescribing the date by which the insurance fund must become sufficient;
- (c) prescribing the amount of the insurance fund required to make the fund sufficient by the prescribed date or prescribing the method of determining that amount, including any formula, ratio or percentage to be used to calculate the amount;

(2) Section 100 of the Act is amended by adding the following clauses:

- (f.1) prescribing, for the purposes of subsection 97.1 (2), an amount, expressed as a ratio or percentage, that is greater than a sufficiency ratio of 115 per cent but less than a sufficiency ratio of 125 per cent;
- (f.2) prescribing circumstances for the purposes of subsection 97.1 (2);
- (f.3) prescribing criteria for the purposes of section 97.1;

(f.4) prescribing requirements for the purposes of subsection 97.1 (5);

(f.5) prescribing the method of calculating the sufficiency ratio for the purposes of section 97.1, including any formula, ratio or percentage to be used to calculate the amount;

5 Section 159 of the Act is amended by adding the following subsection:

Agreement re administration of Part VII

(11.1) The Board may enter into an agreement with any person or entity for the purpose of administering Part VII.

Commencement

6 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.