

Ontario Government Passes *Working for Workers Act, 2021*

December 3, 2021

On November 30, 2021 the Ontario Government passed [Bill 27](#), *Working for Workers Act, 2021*, which received Royal Assent on December 2, 2021. Bill 27 amends the *Employment Standards Act, 2000*, *Occupational Health and Safety Act*, *Workplace Safety and Insurance Act, 1997*, *Employment Protection for Foreign Nationals Act, 2009*, *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, and *Ministry of Agriculture, Food and Rural Affairs Act*.

Our October 27, 2021 [briefing note](#) summarized the key proposed amendments in Bill 27. This current briefing note incorporates amendments made to the Bill since it was first introduced.

For more information or to discuss how the amendments may impact your business, contact your Sherrard Kuzz LLP lawyer or our firm at info@sherrardkuzz.com.

Employment Standards Act, 2000 (“ESA”)

Non-Competition Language Prohibited

Bill 27 prohibits an employer and employee from entering into an agreement that is, or includes, a non-compete agreement. Any such agreement, if entered into, is void.

A non-compete agreement is defined 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*”.

Since initially introduced, this part of Bill 27 has been amended so that the prohibition on a non-compete will not apply if the agreement is entered into with an employee who is an executive. An executive means “*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*”.

Bill 27 also includes an exception if the non-compete is entered into as part of a sale (which includes a lease) of a business, or part of a business, if the purchaser and seller agree that the seller is prohibited from engaging in any competitive activity after the sale and, immediately after the sale, the seller becomes an employee of the purchaser.

Note: This prohibition does not restrict an employer from using other contractual terms to protect its business from a departing employee, such as a non-solicitation, confidentiality or non-disclosure clause or agreement.

*These amendments are in force retroactively to **October 25, 2021**.*

“Disconnect from Work” Policy Requirement

Bill 27 requires an employer that employs 25 or more employees on January 1 of any year, to, before March 1 of that year, ensure it has a written policy in place to address “disconnecting from work”. An employer will have six months after the Bill receives Royal Assent to comply (instead of the March 1 deadline) and the assessment of whether the employer has 25 or more employees will be made as of the January 1 immediately preceding the date of Royal Assent.

“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.*”

The policy must include the date it was prepared and the date any changes were made to the policy. In addition, and among other things, an employer must:

- provide a copy of the written policy to each of the employer’s employees within 30 days of preparing or amending a policy
- provide a copy of the written policy within 30 days of hiring a new employee
- retain a copy of every written policy (including amendments) for at least three years after the policy ceases to be in effect

These amendments are now in force. .

Licensing of Temporary Help Agencies and Recruiters

Bill 27 prohibits a temporary help agency or recruiter from operating without a licence. Similarly, it will be a violation of the ESA for an employer or prospective employer to knowingly engage or use the service of a temporary help agency or recruiter that is not licenced.

The Director of Employment Standards (“Director”) will publish and maintain a public record on a Government of Ontario website of the name of each licenced temporary help agency and recruiter, the date the licence was issued and the date the licence will expire. The registry will also include the names of those whose licence has been revoked or suspended and the date of that revocation or suspension.

A temporary help agency or recruiter may apply to the Director for a licence or renewal of a licence by submitting a form with the prescribed information, paying a fee and providing any additional security that may be prescribed. Each licence will expire one year after it is issued or renewed.

An application for a new licence, or licence renewal, can be denied if based on past or present conduct, there are reasonable grounds to believe the applicant or licence holder will not carry-on business with

honesty and integrity and in accordance with the law, or the applicant has made a false or misleading statement or provided false or misleading information in the application.

An application for a new licence, or licence renewal, shall be denied if the applicant has not complied with an order under the ESA or the *Employment Protection of Foreign Nationals Act, 2009* or the applicant fails to meet the requirements under the ESA and its regulations for the licence. Additionally, an application shall be denied if the applicant has ever charged a fee to a foreign national in contravention of the *Employment Protection of Foreign Nationals Act, 2009* or has engaged or used the services of a person who is not an employee of the applicant who has charged or collected such a fee.

A licence can be suspended or revoked on the same grounds as exist for refusal or renewal of a licence. In such a case, the Director retains the discretion to reinstate a suspended licence if it considers it appropriate to do so.

A person whose application is refused, revoked or suspended is entitled to a review of the refusal, revocation or suspension, provided they apply to the Ontario Labour Relations Board within 30 days of their receipt of the notice of refusal, revocation or suspension.

If a licence to operate a temporary help agency is refused, revoked or suspended the agency must 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.

If a recruiter's licence is refused, revoked, or suspended, this notice must be proved to every employer, prospective employer and prospective employer who has engaged or used the services of the recruiter within 30 days after the date on which the notice of refusal, revocation or suspension is served.

If a licence is refused (new or renewal) or revoked, a fresh application may not be applied for unless at least two years have passed OR the applicant satisfies the Director that new evidence is available.

Bill 27 stipulates certain records that must be kept, and for how long, and includes a specific prohibition of any reprisal as against any person in relation to the recruiter rules.

These amendments come into force on a date to be proclaimed.

Occupational Health and Safety Act

This act is amended to require the owner of a workplace to 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 include where providing access to a washroom is not reasonable or practical relating to health and safety, the nature of or conditions at the workplace, security, the location of the washroom within the workplace, or if the washroom is in, or can only be accessed through, a dwelling.

This amendment comes into force on a date to be proclaimed.

Workplace Safety and Insurance Act, 1997 (“WSIA”)

Bill 27 will grant the Workplace Safety and Insurance Board (“WSIB”) the power to disburse excess insurance funds to Schedule 1 employers when the insurance fund is equal to or more than 115% and is less than 125% funding sufficiency. As of 2020, the insurance fund is at 117% funding sufficiency.

Bill 27 also gives the WSIB discretion to distribute the excess funds to Schedule 1 employers in differing amounts based on criteria set by the WSIB, and to withhold the amount of funds to be distributed to a Schedule 1 employer based on the WSIB’s own criteria and the employer’s compliance with the WSIA. Any decision with respect to the distribution of excess insurance funds will not be open to appeal.

These amendments come into force on a date to be proclaimed.

Employment Protection for Foreign Nationals Act, 2009

This act is amended to prohibit a recruiter or employer, in connection with the recruitment or employment of a foreign national, to knowingly use the service of a recruiter who has charged a fee to a foreign national in contravention of this act.

Further, if such a fee is charged, a recruiter that uses the services of another recruiter in connection with the recruitment or employment of a foreign national is liable to repay fees charged to the foreign national by the other recruiter. If the recruiter that uses those services is a corporation, the directors of that recruiter, are jointly and severally liable for those fees.

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.

These amendments are now in force.

Fair Access to Regulated Professions and Compulsory Trades Act, 2006

This act is amended to provide that a regulated profession is required to ensure it complies with any regulation respecting English or French language proficiency testing requirements and is prohibited from including Canadian experience as a requirement for registration unless an exemption from the prohibition is granted.

This amendment is now in force.



The information contained in this briefing note is provided for general information purposes only and does not constitute legal or other professional advice, nor does accessing this information create a lawyer-client relationship. This briefing note is current as of December 3, 2021 and applies only to Ontario, Canada, or such other laws of Canada as expressly indicated. Information about the law is checked for legal accuracy as at the date the presentation/article is prepared but may become outdated as laws or policies change. For clarification or for legal or other professional assistance please contact Sherrard Kuzz LLP.

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