

## Ontario Proposes Limiting “On-Call” Practice, Eliminating Non-Compete Agreements, and More

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The government of Ontario has introduced legislation that they proclaim will “*make the province the best place for people to work, live and raise a family.*” The legislation, Bill 27 – the *Working for Workers Act, 2021* (“Bill 27”), seeks to amend a series of provincial employment laws, promising to give employees within the province new and novel legal rights. This post covers some of the most important changes and how they may impact your business.

Bill 27, if it were to receive Royal Assent, would bring significant changes to the *Employment Standards Act, 2000* (“ESA”). In its present form, Bill 27 would:

1. Add a new section to the ESA, Part VII.0.1, that would impose a requirement on a business, that employs 25 or more employees, to have a written policy with respect to an employee’s ability to “disconnect from work”. Disconnecting from work is defined under the Bill 27 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.*”

If passed, employers would have six months, from the date Bill 27 receives Royal Assent, to implement such a policy, and would be required to provide the policy to all workers, including new hires, within 30 days thereafter. Bill 27 does not specify what must be included within the policy, although that may be prescribed in the future.

This amendment could have serious, and costly, implications for employers who have employees operating on an “on-call basis.” Employers will have to assess their present workforce to proactively mitigate any impact this change may have.

2. Prohibit the use of Non-Compete Agreements that govern employee-employer relationships, unless a specific exclusion applies.

Exclusions for this section relate primarily to Non-Competes in the context of the sale and purchase of a business. These changes will not impact the use of Non-Solicitation agreements and will not apply retroactively to prior employment agreements.

Non-Compete Agreements have been notoriously difficult to enforce through the Courts. However, in certain circumstances, a very narrow and well drafted Non-Compete Agreement may be valid. The changes made by Bill 27 will effectively end this practice entirely.

3. Implement new licensing requirements for the use of temporary help agencies and recruiters, wherein employers would be required to hire only from licensed temporary help and recruitment agencies. Help and Recruitment agencies would have a series of compliance requirements under Bill 27 to be considered licensed by the Province.

## Continued

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In addition to the changes made to the ESA, Bill 27 seeks to amend the following pieces of workplace legislation:

- *Employment Protection for Foreign Nationals Act, 2009*: 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, will be jointly and severally liable to repay fees charged to the foreign national by the other recruiter in contravention of the *Employment Protection for Foreign Nationals Act*.
- *Occupational Health and Safety Act*: The owner of a workplace will be required to provide access to a washroom to persons making deliveries to or from the workplace. Certain exceptions are listed in Bill 27, including where providing access would not be reasonable or practical for health and safety reasons.
- *Workplace Safety and Insurance Act, 1997*: Gives the Workplace Safety and Insurance Board new powers to distribute amounts in the insurance fund in excess of the prescribed amounts under Schedule 1.
- *Fair Access to Regulated Professional and Compulsory Trades Act, 2006*: Would prohibit employers, in regulated professions, from including "Canadian experience requirements" as qualifications for registrations unless an exemption is granted. Regulated professions will also be required to ensure they comply with any regulations respecting English or French language proficiency testing requirements.

Employers and employees should monitor the developments of Bill 27 closely, as it has the potential to significantly change how many workplaces operate. We will continue to monitor any changes to Bill 27 as it moves towards receiving Royal Assent.

Please note that this bulletin is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. We strongly recommend that you contact your Miller Canfield lawyer with any specific questions you may have so that those questions can be addressed properly with you.