What's New in HR Law

Ontario Passes Bill 27 with Amendments

December 2, 2021

Bottom Line

Bill 27, Working for Workers Act, 2021 ("Bill 27") received Royal Assent on December 2, 2021. Now that Bill 27 is in force, employers have a number of new responsibilities, and employees have corresponding workplace rights.

In our earlier update, we provided readers with an overview of the wide-ranging changes proposed by Bill 27 at the time it was initially tabled. Since then, the Standing Committee on Social Policy made a number of amendments, which were incorporated into the version of Bill 27 as passed. In this update, we provide readers with an overview of the key amendments.

Key Amendments

The amended version of Bill 27 as passed incorporates the following amendments made by the Standing Committee:

1. Non-Compete Agreements Permissible with "Executives"

Bill 27 amends the *Employment Standards Act, 2000* ("ESA") to prohibit the use of non-compete agreements between employers and employees, except in a narrow set of

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circumstances (*e.g.* in the context of a sale of a business). These provisions were amended by the Standing Committee to include an additional exception for employees who are "executives".

An "executive" is defined by Bill 27 as "any person who holds the office of chief executive officer, president, chief administrative officer, chief operating officer, chief information officer, chief legal officer, chief human resources officer, or chief development officer, or holds any other chief executive provision."

The provisions relating to the prohibition of non-compete agreements will be deemed to have come into force on October 25, 2021. As worded, Bill 27 would appear to prohibit employers from entering into any non-compete agreements ***after*** this date. However, it has yet to be seen how the Ministry of Labour and adjudicators will interpret these provisions, and whether they might be applied retroactively to pre-existing non-compete agreements.

2. Prohibition Against Using Recruiters that Charge Fees

Bill 27 amends the *Employment Protection for Foreign Nationals Act* ("EPFNA"). Following the Standing Committee's amendments, Bill 27 now includes a prohibition against a recruiter or employer, in connection with the recruitment or employment of a foreign national, from knowingly using the services of a recruiter who has charged a fee to a foreign national. This amendment dovetails with section 7(1) of the EPFNA, which prohibits a recruiter from directly or indirectly charging a foreign national for any service, good or benefit to the foreign national.

3. Additional Requirements for Licensure as a Recruiter

Bill 27 amends the ESA to include changes to the recruiter licensing requirements. Following the Standing Committee's amendments, an individual applying for licensure as a recruiter will be obligated to make various statements, which include statements relating to, among other things, their awareness of the prohibition against charging fees to foreign nationals under the EPFNA, and their awareness that the Director of Employment Standards will refuse to issue a licence or revoke or suspend a licence if the applicant has charged fees to a foreign national in contravention of the EPFNA.

The legislative changes with respect to recruiters will come into force on a future date to be named by proclamation of the Lieutenant Governor.

No Additional Details Regarding Policies on Disconnecting From Work

As outlined in our earlier update, Bill 27 will also require employers with 25 or more employees to implement a written policy relating to disconnecting from work.

The original version of Bill 27 included a definition of "disconnecting from work" (*i.e.* "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"), but provided no direction or information about what a policy on the subject would be required to include.

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It was hoped that any amendments made by the Standing Committee would address this gap. However, no revisions were made to this portion of Bill 27. As such, unless and until such time as directing regulations are enacted under the ESA, all that is known is that employers will be required to implement a policy that addresses the issue of disconnecting from work.

We are continuing to monitor developments that will provide employers with further direction as to what the specific nature of their obligations will be in this regard, and will update our readers as such information becomes available.

Employers will be required to implement disconnecting from work policies within six months of Bill 27 receiving Royal Assent.

Check the Box

The changes imposed by Bill 27 are far-reaching and, for many employers, have the potential to impact significantly on their existing contracts, policies, and procedures. Employers are encouraged to carefully review the new requirements imposed by Bill 27 and make the necessary modifications in their own workplaces to ensure compliance once the legislative amendments have come into force.

Need more information?

For more information about the impacts of Bill 27 on your workplace contact Ashley Brown at 416-408-5563, or your regular lawyer at the firm.

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