



# What's New in HR Law

## Recent Amendments to the *Competition Act* Introduce New Criminal Offences, Increased Administrative Penalties, and More

September 29, 2022 | By [Charles Muriithi](#)

### Bottom Line

On June 23, 2022, the *Budget Implementation Act, 2022, No. 1*, S.C. 2022, c. 10 (“Bill C-19”), received Royal Assent. Among other changes to various federal statutes, Bill C-19 makes significant amendments to the *Competition Act*, R.S.C., 1985, c. C-34 (the “Act”), including new provisions to criminalize business collusion amongst employers, clarify certain terms under the Act, and increase administrative monetary penalties. This article highlights the most important amendments to the Act for employers.

While some of the changes are already in effect, others will come into force on June 23, 2023, in order to provide employers with ample opportunity to ensure their business practices are legally compliant.

### Wage-Fixing and No-Poaching Agreements Criminally Prohibited

Effective June 23, 2023, provisions will be added to Part VI of the Act to criminalize agreements between employers that: (i) fix, maintain, decrease, or control wages or other terms of employment (“wage-fixing

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agreements”); and (ii) restrict hiring or attempts to hire each other’s employees (“no-poaching agreements”).

The new provisions significantly expand the criminal conspiracy provisions under section 45(1) of the Act, as they apply to any unaffiliated employers rather than to only “competitors”. In addition, the existence of a *written* agreement between employers is not necessary to trigger a violation of these new provisions. Instead, a court may infer the existence of an improper wage-fixing or no-poaching agreement based on the surrounding circumstances.

Employers who are convicted under section 45 of the Act may face imprisonment for up to 14 years or a fine set at the court’s discretion. (Currently, the maximum fine for criminal conspiracy under the Act is \$25 million but this maximum will now be repealed.) An offending party may also be liable for civil damages under section 36 of the Act.

### “Drip Pricing” and “Anti-Competitive Acts” Defined

The amendments also clarify a couple of terms under the Act:

- The new section 52(1.3) under the Act describes “drip pricing” as “the making of a representation of a price that is not attainable due to fixed obligatory charges or fees” other than mandatory charges or fees imposed by government (e.g., sales taxes).
- Section 78(1) now defines an “anti-competitive act” as “any act intended to have a predatory, exclusionary or disciplinary negative effect on a competitor, or to have an adverse effect on competition.” This definition is provided in conjunction with the non-exhaustive list of anti-competitive acts under the previous section 78(1). Further, a new anti-competitive act has been added to the non-exhaustive list: a selective or discriminatory response to an actual or potential competitor for the purpose of impeding, preventing, or eliminating a competitor’s participation in the market.

### Increased Administrative Monetary Penalties

As mentioned above, the maximum fine for offences under section 45 of the Act will be removed.

Deceptive market practices under Part VII.1 of the Act will also attract greater penalties. Fines for individuals are now the greater of: (i) \$750,000 (or \$1 million for each subsequent violation); and (ii) three times the amount of the derived benefit from the prohibited conduct. For corporations, applicable fines are the greater of: (i) \$10 million (or \$15 million for each subsequent violation); and (ii) three times the amount of the benefit derived from the prohibited conduct or, if that amount cannot be reasonably determined, 3% of the corporation’s annual worldwide gross revenue.

Similarly, abuse of dominance under part VIII of the Act will also attract greater administrative fines. The new maximum penalties are now the greater of: (i) \$10 million (or \$15 million for each subsequent violation); and (ii) three times the amount of value derived from the prohibited conduct or, if this amount cannot be reasonably determined, 3% of the offending party’s worldwide annual gross revenue.

The above changes regarding deceptive market practices and abuse of dominance are currently in force.

## Check the Box

While a number of the amendments do not come into force until June 23, 2023, employers are advised to review their business practices as soon as possible to ensure compliance with the Act.

During this timeframe, employers may wish to audit their human resources policies to ensure that their practices remain lawful. In particular, non-solicitation clauses appearing to restrict employee mobility during and following the acquisition or sale of a business should be reviewed by experienced counsel for legal risk and, if necessary, modified or eliminated entirely.

Businesses may also wish to conduct regular compliance assessments and take appropriate actions to mitigate any risks as they arise.

## Need More Information?

For more information about the recent amendments or assistance with *Competition Act* compliance matters, contact [Charles Muriithi](mailto:cmuriithi@filion.on.ca) at [cmuriithi@filion.on.ca](mailto:cmuriithi@filion.on.ca) or your regular lawyer at the firm.



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