



Ontario Government Proposes Big Changes to Employment Law

November 2021 Employer Alert

During the ongoing pandemic, most of the changes to our employment law landscape were related to the pandemic. Now, effectively the first time since 2019, the Ontario Government has published three Bills that will cause significant changes to employment law. If passed, the changes will include a ban of most non-competition agreements, a 19% wage increase for some employees, restrictions on contacting employees after hours, and new employer exposures for workplace accidents. As such, employers need to be ready to address the impact, if/when royal assent occurs.

Bill 13 – Supporting People and Business Act, 2021 – New Health and Safety Obligations

On October 7, 2021, the Ontario Minister of Small Business introduced Bill 13, *Supporting People and Businesses Act, 2021*, which proposes to amend the Occupational Health and Safety Act (the “OHSA”). The proposed amendments include:

- Expanding written workplace safety policy and program requirements to provide that even employers with five or fewer workers will have to prepare and implement a written health and safety policy and program, and review the same annually.
- Requiring that when there is a critical injury (e.g. a worker passes out, loses a limb, etc.) or a fatality, the company must prepare a written report and share the same with the

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health and safety representative or joint health and safety committee within 48 hours.

Given that any critical injury report will be producible to the Ministry of Labour, further to its investigation and potentially could lead to the laying of charges, employers should strongly consider seeking legal advice prior to preparing the same.

Bill 27 – Working for Workers Act, 2021 – Mandatory Workplace Disconnect Policy, Ban on Non-Competitions, and Regulating Temp Agencies

On October 25, 2021, the Ontario Minister of Labour introduced Bill 27, [Working for Workers Act, 2021](#), which proposed multiple amendments to the Employment Standards Act (the “ESA”). The proposed amendments include:

- Requiring employers with 25+ employees, to have a policy ensuring that employees disconnect from work after work. In particular, the policy must address that the employees are not to engage in work communication (e.g. email, phone, etc.) during their break/rest periods.
- Prohibiting employers from entering into a non-competition agreement with an employee, whether it be a standalone agreement, part of an employment agreement, or part of another agreement. Under the Bill, the only exception will be where the agreement is entered into further to a purchase and sale, and the seller becomes an employee of the purchaser. It is unclear as to whether this prohibition of non-competition agreements will void current non-competition agreements. If so, for employment agreements without a severability provision (i.e. a provision that cuts out unenforceability provisions), the entire agreement may be unenforceable.
- Requiring temporary help agencies and recruiters to have and maintain a licence to operate in Ontario.

Bill 43 – Build Ontario Act – New Minimum Wage

Currently, provincial minimum wage rates increase every October 1, to an amount determined and announced on or before April 1 of every year. Further to this, on October 1, 2021, minimum wage

increased from \$14.25 to \$14.35 an hour for most employees.

On November 4, 2021, the Ontario Minister of Finance introduced Bill 43, [Build Ontario Act \(Budget Measures\), 2021](#), which proposes a change to the minimum wage rates in the province, effective January 1, 2022. In particular, under Bill 43, the new minimum wage for most employees will increase from \$14.35 to \$15.00 an hour. Even more substantial though, under Bill 43, the separate minimum wage category for liquor servers will be eliminated. As a result, minimum wage for liquor servers will jump by 19%, from \$12.55 to \$15.00 an hour.

All three Bills are expected to move quickly through the Ontario Legislature. Indeed, the first two Bills, Bill 13 and Bill 27, have already carried on their second reading.

In review of the above, employers should take the time to identify the potential impact to their rights and obligations as an employer. For strategic advice regarding addressing the above, including drafting employee disconnect policies, drafting enforceable agreements regarding employees working for competitors, and addressing employee wage costs concerns, please [contact our firm](#).

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