

Employer Alert: Ontario Passes *Working for Workers Act*, 2021

December 2, 2021

By Daniel Wong, Alfred Pepushaj

On November 30, 2021, the Government of Ontario passed the [Working for Workers Act, 2021](#) (the “Act”), an omnibus legislation that amends several employment-related statutes, including the *Employment Standards Act, 2000* (“ESA”). The Act, which impacts both employers and employees, implements changes that the [Ontario Workforce Recovery Advisory Committee](#) recommended after it was tasked to provide recommendations in three areas: economic recovery; strengthening Ontario’s competitive position; and supporting workers.

The following is an overview of some of the employment-related changes created by the Act.

Non-Compete Agreements Prohibited

The Act amends the ESA by prohibiting an employer from entering into an employment contract or other agreement with an employee that includes a non-compete agreement. This prohibition makes Ontario the first jurisdiction in Canada, and one of the first in North America, to ban non-compete agreements.

The Act defines “non-compete agreement” 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.”

The Act provides for two exemptions to the prohibition on non-compete agreements:

- Non-compete agreements are permitted in the context of the sale of a business or a part of a business and, as a part of the sale, the purchaser and seller enter into an agreement that prohibits the seller from engaging in any business, work, occupation, profession, project or other activity that is in competition with the purchaser’s business after the sale and, immediately following the sale, the seller becomes an employee of the purchaser.
- The prohibition does not apply with respect to an employee who is an executive. The Act defines “executive” as “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.”

Disconnecting From Work Policies

The Act also amends the ESA by requiring employers with 25 or more employees as of January 1st of any year to implement, before March 1st of that year, a written policy in place for all employees with respect to disconnecting from work.

Under the Act, “disconnecting from work” is defined as “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.”

In a [news release](#), the Ontario government explained that these policies could include expectations about response time for emails and encouraging employees to turn on out-of-office notifications when they are not working.

Under the Act, employers will have six-months after the day the Act receives Royal Assent to comply with the requirements above.

Access to Washrooms for Delivery Workers

The Act amends the *Occupational Health and Safety Act* to require the owner of a workplace, subject to certain exceptions, to provide access to a washroom to persons making deliveries to or from the workplace.

Owners are not required to provide access to a washroom if:

- providing access would not be reasonable or practical for reasons relating to the health or safety of any person at the workplace, including the worker who requests to use a washroom;
- providing access would not be reasonable or practical having regard to all the circumstances, including, but not limited to, the nature of the workplace, the type of work at the workplace, the conditions of work at the workplace, the security of any person at the workplace and the location of the washroom within the workplace; or
- the washroom is in, or can only be accessed through, a dwelling.

Other Changes

The Act introduces other changes, including:

- prohibiting regulated professions from including “Canadian experience” as a qualification for registration unless exempt for the purposes of public health and safety; and
- requiring recruiters and temporary help agencies (THA) to be licensed, including a prohibition against employers from knowingly engaging or using the services of an unlicensed recruiter or THA.

Takeaway

The Act impacts various employers. At a minimum, employers will want to review and update their employment agreement templates to reflect the ban on non-compete agreements, if any. Additionally, certain employers (*i.e.*, those with 25 or more employees) should revise and update their policies and procedures to ensure compliance with new requirements introduced by the Act.

If you want to discuss how the Act may impact your business or need assistance with implementing the necessary changes to comply, please contact a member of WeirFoulds' Employment Law Group.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

For more information or inquiries:



Daniel Wong

Toronto
416.947.5042

Email:
dwong@weirfoulds.com

Daniel Wong is Chair of the Firm's Employment & Labour Practice Group with a practice that is focused on employment and labour relations.



Alfred Pepushaj

Toronto
416.619.6293

Email:
apepushaj@weirfoulds.com

Alfred Pepushaj is an Associate in the Commercial Litigation Practice Group at WeirFoulds LLP. He focuses on complex corporate and commercial litigation, including fraud, contract breaches, and shareholder disputes, as well as trusts and estates litigation involving will challenges, fiduciary breaches, and contested asset distributions.

WeirFouldsLLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035