New obligations for Ontario employers announced by government

October 26, 2021

Mandatory “disconnecting from work” policies, prohibitions on non-competition agreements, and licensing requirements for temporary help agencies and recruiters, are only some of the changes in the Ontario Government’s Bill 27. Ontario employers should consider the potential impacts of this new legislation now, before it becomes law.

On October 25, 2021, Ontario’s Minister of Labour introduced omnibus legislation that will change the Ontario employment law landscape in a number of areas. Bill 27, also known as the *Working for Workers Act, 2021*, will, if passed into law, make a number of changes for Ontario employers, including the following.

1. Disconnecting from Work (DFW) policy.

- Employers employing 25 or more employees are required to have a written policy in place for all employees with respect to disconnecting from work that includes the date the policy was prepared and the date any changes were made to the policy. “Disconnecting from work” means 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. The DFW policy must contain such information as may be prescribed.
- Employers who have 25 or more employees (as of January 1, immediately preceding the royal assent date) have six months after the day Bill 27 receives royal assent to have the DFW in place. Employers who do not have 25 or more employees (as of the January 1 immediately preceding the royal assent date) will need to have the DFW policy in place in the year when they have 25 or more employees as of January 1, and, specifically, before March 1 of such year.
- Employers must also provide a copy of the DFW policy, and any revisions of the policy, to each current employee and new employee within certain timeframes. DFW policies must be retained for three years after they cease to be in effect.

2. Prohibiting non-competition agreements.

- Employers are prohibited from entering into employment contracts or other agreements with an employee that are, or include, a non-competition agreement, subject to certain exceptions.
- The exception that is in the current version of the proposed legislation is a "sale of business"-type exception.
- The legislation provides that, for greater certainty, subsection 5(1) of Ontario's employment standards legislation applies, and if an employer contravenes the (new) non-competition prohibition, the non-competition agreement is void.
- Interestingly, the prohibition on non-competition covenants is deemed to have come into force on October 25, 2021 (assuming the legislation becomes law as currently drafted).

3. Licensing framework for temporary help agencies (THA) and recruiters.

- THAs and recruiters are subject to a new licensing framework. A "recruiter" will be defined in the regulations.
- THAs and recruiters are required to hold a license for being a THA or a recruiter, respectively.
- No client of a THA and/or recruiter can knowingly engage or use the services of a temporary help agency and/or recruiter, as applicable, unless the person who operates the THA and/or the recruiter, as applicable, holds the applicable license. Clients of a temporary help agency will also have additional obligations to record and retain certain information as set out in the legislation.
- The legislation also sets out other rules, including application and renewal rules, and revocation and suspension powers of the Director of Employment Standards.

4. Changes to the *Employment Protection for Foreign Nationals Act, 2009*

- This legislation will make the corporate directors of a recruiter that use the services of another recruiter in connection with the recruitment or employment of a foreign national *jointly and severally liable* to repay fees charged to the foreign national by the other recruiter in contravention of subsection 7(1) of the *Employment Protection for Foreign Nationals Act, 2009*. Where the recruiter is not a corporation or engaged by a corporation, the recruiter will be jointly and severally liable for such impermissible fees charged to the foreign national by the other recruiter.

The legislation will also prohibit certain regulated professions from including Canadian experience requirements as qualifications subject to certain exemptions, require owners of workplaces to provide access to a washroom to persons making deliveries to or from the workplace subject to certain exceptions, and will permit or require, depending on the circumstances, the Workplace Safety and Insurance Board (WSIB) to distribute amounts in the insurance fund in excess of prescribed amounts among Schedule 1 employers.

Bill 27 is currently in the first reading stage. There are a number of legislative steps before it will become law, the legislation may be amended as it progresses through those steps, and parts of the legislation may become law on different days. This is a

Government Bill, and the Government has a majority in the provincial legislature, therefore it is expected that this legislation, or a substantially similar version, will become law in the near future.

The proposed legislative changes will impact employers across Ontario, while others are very specific to a particular industry. Employers are advised to start planning for these changes, including a DFW policy, how to deal with non-competition agreements, and the applicability of the new framework to “recruiters” and THAs.

Contact your BLG lawyer or any of the key BLG contacts listed below to discuss ways to proactively plan for and address these changes.

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