

## ONTARIO WORKERS HAVE THE RIGHT TO ‘DISCONNECT FROM WORK’ AS WELL AS OTHER RIGHTS UNDER ESA

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### A. INTRODUCTION

EMPLOYERS OF CHARITIES and not-for-profits must provide a “right to disconnect” for workers and increase the minimum wage rate after changes were made affecting employment standards legislation in Ontario this year. As of January 1, 2022, *Employment Standards Act, 2000*<sup>1</sup> (the “ESA”) provisions take effect that increase the minimum wage and eliminate the special “liquor servers” wage rate. Amendments to the *ESA* are also now in effect that were introduced with Bill 27, the *Working for Workers Act, 2021*,<sup>2</sup> which received Royal Assent on December 2, 2021 (“Bill 27”). This Bulletin provides a brief overview of these new employment law developments that will impact charities and not-for-profits in Ontario.

### B. WORKING FOR WORKERS ACT

#### 1. Disconnecting from Work

Bill 27 requires employers that employ 25 or more employees to have a written policy for disconnecting from work (“DfW Policy”). The new legislation applies to employers as of January 1<sup>st</sup>, 2022, and they have until June 2, 2022, being six months after Bill 27 received Royal Assent, to comply.<sup>3</sup> “Disconnecting

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<sup>1</sup> S.O. 2000, c. 41 [ESA], online: <https://www.ontario.ca/laws/statute/00e41>.

<sup>2</sup> S.O. 2021, c. 35 - Bill 27 [Bill 27].

<sup>3</sup> *ESA*, *supra* note 1, s 21.1.2 (5).

from work” is now defined under section 21.1.1 of the *ESA* 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.”<sup>4</sup>

Starting in 2023, if an employer has 25 or more employees as of January 1 of the year, a DfW Policy must be implemented in the workplace as of March 1 for that year (an exception applies to 2022 only, which is extended to June 2, 2022) and must include the date the policy was prepared and the date any changes were made to the policy.<sup>5</sup> Within 30 days of preparing a DfW Policy, or within 30 days of any changes being made to an existing DfW Policy, employers must provide a copy to each of their employees. A copy must also be provided to any new employees within 30 days of their start of employment.<sup>6</sup> These DfW Policies must contain any prescribed information under the *ESA*,<sup>7</sup> such as may be filed in a forthcoming regulation. At the time of this Bulletin’s publication, there is currently not a regulation under the *ESA* that specifically governs what content must be included in a DfW Policy beyond the provisions of sections 21.1.1 and 21.1.2 of the legislation.

## 2. Non-compete Agreements

Bill 27 also amended the *ESA* to add Part XV.1, titled, “Non-compete Agreements”. Employers are now prohibited from entering into a non-compete agreement with an employee (with some exceptions, noted below). “Non-compete agreement” is defined in the *ESA* under section 67.1 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 prohibition does not apply to non-compete agreements entered into before October 25, 2021. There are also some explicit exceptions to the prohibition. It does not apply to executives, which are defined in subsection 67.1 (5) 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

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<sup>4</sup> *ESA*, *supra* note 1, s 21.1.1.

<sup>5</sup> *Ibid*, s 21.1.2 (1).

<sup>6</sup> *Ibid*, s 21.1.2 (2)–(3).

<sup>7</sup> *Ibid*, s 21.1.2 (4).

officer, chief human resources officer or chief corporate development officer, or holds any other chief executive position.”

There are also some leases or sales of a business, or part of business — or a lease — that are exempt from the non-compete agreements ban where the seller becomes an employee: if the purchaser, or leaser, 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 [or leaser’s] business after the sale and, immediately following the sale, the seller becomes an employee of the purchaser [or leaser].”

## C. MINIMUM WAGE INCREASES

ONTARIO’S GENERAL MINIMUM WAGE is now \$15.00 per hour as of January 1<sup>st</sup>, 2022, in effect under Part IX of the *ESA*. The increased minimum wage came into force as a result of Bill 43, the *Build Ontario Act (Budget Measures), 2021*,<sup>8</sup> introduced into the Legislative Assembly of Ontario on November 4, 2021, and for which Royal Assent was granted on December 9, 2021. The new legislation also eliminates the lower minimum wage rate for liquor servers.

Ontario Premier Doug Ford announced the minimum wage increases — from \$14.35 to \$15 for the general minimum wage — as part of the Fall Economic Statement on November 2, 2021.<sup>9</sup> The Premier stated that increasing the minimum wage was a top priority for labour leaders in the province as the cost of living continues to rise amidst the COVID-19 pandemic.

Special minimum wage rates apply to the following groups of workers:<sup>10</sup>

- Students under the age of 18 who work 28 hours a week or less when school is in session, or work during a school break or summer holidays must now be paid at least \$14.10 an hour.
- Homeworkers (those who do paid work out of their own homes for employers) minimum wages increased from \$15.80 an hour to \$16.50 an hour.

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<sup>8</sup> S.O. 2021, c. 40 - Bill 43 [Bill 43].

<sup>9</sup> Office of the Premier, “Ontario to Raise Minimum Wage to \$15 an Hour,” *Government of Ontario* (2 November 2021), online: [Newsroom <https://news.ontario.ca/en/release/1001090/ontario-to-raise-minimum-wage-to-15-an-hour>](https://news.ontario.ca/en/release/1001090/ontario-to-raise-minimum-wage-to-15-an-hour).

<sup>10</sup> “Minimum Wage,” *Government of Ontario* (4 January 2022), online: <https://www.ontario.ca/document/your-guide-employment-standards-act-0/minimum-wage>.

- Hunting and fishing guides must now be paid \$75.00 for working less than five consecutive hours in a day, and \$150.05 for working five or more hours in a day.

## D. CONCLUSION

THE REQUIREMENT for implementing new DfW Policies and the increased minimum wage are significant legislative developments for all employees and employers in Ontario, including charities and not-for-profits. It is not yet entirely clear what a DfW Policy must include, beyond providing workers with the means to fulfill the definition of “disconnecting from work” included under section 1 of the *ESA*. As costs of living increase amidst the COVID-19 pandemic and inflation reaches its highest peak in the 21<sup>st</sup> century so far, charities and not-for-profit organizations must ensure that they pay their workers sufficiently to comply with the minimum wage, despite how that may further impact their already struggling efforts to stay within their budgets.