

Employment Law for Paralegals, 2d e. UPDATES – December 3, 2021

Chapter 2 – *Employment Standards Act, 2000* – Rights and Responsibilities

Bill 27, the *Working for Workers Act, 2021* received Royal Assent on December 2, 2021 and amends various statutes including the *Employment Standards Act, 2000* in Schedule 2 as follows:

*New Part VII.0.1 (ss 21.1.1 – 21.1.2):

- imposes a requirement on employers that employ 25 or more employees to have a written policy by March 1 of each year with respect to “disconnecting from work” defined to mean not engaging in work-related communications including emails, telephone calls, video calls or the sending or reviewing of other messages
- employers must provide a copy of the written policy to all employees within 30 days of preparing the policy or any amendments to it and for new employees, within 30 days of the day the employee becomes an employee of the employer
- mandatory content of written policy to be provided by regulation

New Part XV.1 (ss 67.1 – 67.2):

- prohibits employers from entering into employment contracts or other agreements with an employee that are, or that include, a non-compete agreement (subject to certain exceptions including the sale of a business and holders of “executive” positions including the chief executive officer, president, chief administrative officer and others)

Part XVIII. 1 re Temporary Help Agencies:

- ss 74.1.1 – 74.1.15: amended to include detailed provisions regarding licensing requirements for temporary help agencies and recruiters (“recruiter” and terms and conditions regarding licensing to be defined by regulation)
- s 74.4.3: regarding obligations of recruiters
- s 74.12.1 and 74.19: prohibiting reprisal by recruiters and orders if reprisal has been established

Bill 43, *Build Ontario Act (Budget Measures), 2021* received Royal Assent on December 9, 2021.

Schedule 9 amends the *Employment Standards Act, 2000* by increasing minimum wage effective January 1, 2022 as follows:

- employees under 18 years of age who do not work more than 28 hours per week: \$14.10/hour
- for services of hunting and fishing guides, \$75.00 for less than five consecutive hours in a day and \$150.05 for five or more hours in a day, whether or not they are consecutive
- employees who are homeworkers: \$16.50/hour
- all other employees: \$15.00/hour

Differential minimum wage for liquor servers has been removed.

From October 1, 2022, minimum wage will increase pursuant to the Consumer Price Index.

Schedule 3 of the *Working for Workers Act, 2021* amends the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, SO 2006, c 31 as follows:

- new s 10.2: prohibits a regulated profession from requiring as a qualification for registration that a person's experience be Canadian experience, unless an exemption from the prohibition is granted by the Minister for the purposes of public health and safety in accordance with regulations

NOTE: "Regulated Professions" to which the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* applies are listed in Schedule 1 of the Act and included the Law Society of Ontario, the Ontario College of Teachers, and Chartered Professional Accountants of Ontario, among others, but does NOT include health professionals.

Chapter 7 Just Cause for Dismissal

Case in Point page 206 – *Hucsko v A.O. Smith Enterprises Limited*, 2020 ONSC 1346 overturned on appeal – *Hucsko v A.O. Smith Enterprises Limited*, 2021 ONCA 728 (reasons released October 15, 2021)

The Court of Appeal determined that "the trial judge erred by failing to properly identify and characterize the conduct for which the employee was terminated" (at para 32). The trial judge had determined the basis for the termination to have been the employee's refusal to apologize instead of the underlying conduct for the disciplinary action, namely sexual harassment of a co-worker. "The refusal to apologize is only part of the misconduct that the appellant had to consider when deciding whether there has been a breakdown in the employment relationship. The refusal to apologize did not occur in a vacuum. The degree of seriousness of the misconduct that led to the discipline, and then to the dismissal, is critical to the ultimate assessment of the propriety and proportionality of the employer's response. But the trial judge eschewed this analysis, finding instead that the nature and seriousness of the respondent's comments were irrelevant and focusing solely on his refusal to apologize." (at para 38)

Following an analysis of the nature and extent of the misconduct, the surrounding circumstances and the corrective action taken by the employer and by applying the test established in *Dowling v Ontario (Workplace Safety & Insurance Board)* (2004), 246 DLR (4th) 65 (ONCA) explaining the test in *McKinley v BC Tel*, [2001] 2 SCR 161, the Court of Appeal concluded that the employee's "lack of contrition, lack of understanding of the seriousness of his conduct, and his refusal to comply with the reasonable and essential requirement of an apology to the complainant and target of his comments" warranted the termination of his employment with the company. The appeal was allowed, the judgment of the lower court set aside and the employee's wrongful dismissal claim was dismissed.

* Content regarding Bill 27 retrieved 2 December 2021 from <https://www.ola.org/en/legislative-business/bills/parliament-42/session-2/bill-27>