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# e2r Alert!

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## Ontario Bans Non-Compete Agreements with Employees

### **What is the new law?**

The *Working for Workers Act, 2021* (the "Act") amended the *Employment Standards Act, 2000* in Ontario on December 2, 2021. Among other things, it prohibited Ontario employers from entering into an employment agreement or other agreement with an employee that is, or that includes, a non-compete agreement. This also applies to agreements with prospective employees.

While the courts have never been fond of non-compete agreements in the employment context, prior to the Act, some clauses could be enforceable depending on the circumstances and reasonableness of the clause.

### **Are there exceptions?**

The Act states that the prohibition against non-compete agreements is deemed to be effective as of October 25, 2021. Recent case law confirms that non-compete agreements entered into prior to October 25, 2021 may be enforceable in accordance with the common law, but only if the employer can establish that the non-compete restriction is reasonable in all respects.

Any non-compete agreement that is entered into on or after October 25, 2021 is deemed void, unless:

1. the employee sold or leased the business to the employer but, immediately following the sale or entering into the lease, became an employee of the business; or
2. the employee holds any chief executive position (CEO, CFO, President, etc.).

### **Are there other means of protection?**

The Act does not affect the use of other forms of restrictive covenants such as non-solicitation, confidentiality and intellectual property provisions so long as these provisions are not, in substance, non-compete agreements.

### **What does this mean for employers?**

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Employers may need to review their existing agreements for language prohibiting competition, and potentially provide a notice to applicable employees stating that non-compete provisions in their agreements will not be enforced. Moving forward, employers will need to ensure that offers to applicants for employment do not have language prohibiting competition.

If you have any questions, please reach out to schedule a call with an e2r™ Advisor.