Imminent demise of non-compete clauses for federally regulated employers

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On May 6, 2026, the Minister of Finance and National Revenue tabled Bill C-31, entitled *A second Act to implement certain provisions of the budget tabled in Parliament on November 4, 2025*.[1] Bill C-31 proposes significant amendments to the *Canada Labour Code*[2] (the "*Code*") to prohibit non-compete clauses, by an approach comparable to that adopted in Ontario. However, the federal legislator is going further than its Ontario counterpart by granting itself the authority to potentially prohibit other types of restrictive covenants—such as non-solicitation clauses—through regulations.

Among the key measures enacted by the federal legislator is a prohibition against imposing non-compete clauses on federally regulated employees, subject to two categories of exceptions. The stated objective is to promote employee mobility, reduce certain forms of abuse associated with post-employment restrictions and stimulate competition in the labour market.[3] This legislative approach aligns with current trends across the globe restricting non-compete clauses in the world of employment law.

Definitions

A "non-compete clause" means a term or condition of employment, or a clause in an agreement, that prohibits an employee from engaging in any business, work, occupation or trade, profession, project or other activity that is in competition with the employer's federal work, undertaking or business after the employee ceases to be employed'[4] This definition is broad and potentially encompasses non-compete clauses included in documents that are not employment contracts, such as a long-term incentive plan. The Bill also defines an "other employment-related restriction" as "a term or condition of employment, or a clause in an agreement, that is not a non-compete clause and is part of a class specified in the regulations."[5]

Scope and proposed changes

Division XI.1, slated to be incorporated into Part III of the Code through the Bill, prohibits an employer from entering into a non-compete clause with an employee or a union.[6] It also prohibits imposing such a clause on an employee, in particular by inducing them to agree to one. The Bill also provides for the nullity of clauses subject to this prohibition.[7]

For now, the prohibitions imposed by the Bill only apply to non-compete clauses. The federal government may, however, through regulation, define "other employment-related restrictions" to make the prohibitions apply to them, further limiting the ability of employers to safeguard their legitimate interests, such as their goodwill.

Exceptions

The law provides for two main categories of exceptions.

First, the prohibition would not apply to a person who, after leasing or transferring all or part of their work, undertaking or business to an employer, including by sale or merger, becomes an employee of that employer and agrees to a non-compete clause or employment-related restriction in that context, when the business is or becomes a federal enterprise as a result of the transaction.[8]

Second, it would not target the chief executive officer[9] nor certain senior management employees reporting directly to the chief executive officer and holding the position or performing the functions of president, chief operating officer, chief financial officer, chief human resources officer, chief information officer, chief technology officer or chief legal officer. The exception for senior management employees is subject to two conditions: 1) The person reporting directly to the chief executive officer must be the only one to hold or perform the functions of the aforementioned positions, and 2) they must be a "manager" within the meaning of section 167(3) of the *Code*.[10] The legislator also reserves the right to add excluded positions by regulation.

Other provisions included in the Bill

The Bill introduces a prohibition on retaliation, preventing an employer from reprimanding or penalizing an employee for refusing to agree to a non-compete clause.[11]

It also provides for a reversal of the burden of proof. The employer will have the burden of demonstrating that a condition of employment or stipulation does not constitute a non-compete clause or, if it does, that it is not null.[12]

The path to enactment[13]

Bill C-31 was tabled on May 6, 2026. On June 3, 2026, the second reading was passed in the House of Commons and the Bill was referred to the Standing Committee on Finance. It still needs to pass the third reading and the process in the Senate before royal assent.

Coming into force is scheduled for a day to be fixed by order of the Governor in Council.

Once the law comes into force, federally regulated employers will no longer be permitted to require employees to enter into non-compete clauses, subject to the exceptions provided in the Bill. Non-compete clauses existing at the time the law comes into force will remain valid for one year and will only become null after the grace period expires. Employers would be well advised to immediately begin developing alternative strategies to mitigate the upcoming prohibition of non-compete clauses for employees who are currently bound by such clauses.

Practical recommendations

Here are some practical recommendations to help federally regulated organizations both comply with this new legal framework and protect their legitimate interests:

Review existing restrictive covenants within in your organization

A comprehensive review of employment contracts and other relevant contractual documents is crucial to identify non-compete and other restrictive covenants currently in force within your organization.

The review should not be limited to employment contracts alone—it should also extend to any other program, policy or document containing restrictive covenants, including short-term or long-term incentive plans, such as stock option plans. Any atypical non-compete clause, such as one providing for the cancellation of stock options or units if the participant joins a competing business, should also be listed, as it may fall within the scope of the law. Because we do not yet know how the new restrictions will be interpreted, a broader review is more prudent at this stage.

Assess your organizational structure

Given the well-defined exceptions provided for by the law, organizations would do well to review their organizational structure to identify the individuals who may be bound by a non-compete clause and ensure that the corresponding legislative requirements are met.

Exercise increased caution in commercial transactions

Greater caution is required in the context of commercial transactions to ensure that contractual documents are compatible with the exception established by the law.

Identify alternative contractual strategies

What many employers have done in Ontario is use non-solicitation clauses and confidentiality agreements. This could be a good option to proportionately protect the legitimate interests of a federally regulated organization while preserving employee mobility. However, the federal government may limit this contractual strategy by prohibiting other types of restrictive covenants through regulation.

In certain circumstances, garden leave clauses, which we do not believe to be restrictive covenants under Quebec civil law,[14] are certainly options to consider for some employees of federally regulated organizations.

Monitor ongoing legislative updates

We recommend implementing an internal or external monitoring strategy, through your legal counsel, to track the progress of the Bill and any regulations that the federal government may adopt under it.

Our Labour and Employment Law group will closely follow all developments related to Bill C-31. We remain at your disposal to answer any questions you may have regarding these changes and provide innovative strategic advice to protect your legitimate interests under this new legal framework.

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1. *A second Act to implement certain provisions of the budget tabled in Parliament on November 4, 2025*., Bill C-31 (first reading – May 6, 2026), 1st Session, 45th Legislature. Can., section 9.
2. R.S.C. 1985, c. L.-2.
3. Department of Finance Canada, Minister Champagne introduces second piece of legislation to implement Budget 2025: Canada Strong, online: Minister Champagne introduces second piece of legislation to implement Budget 2025: Canada Strong - Canada.ca.
4. *A second Act to implement certain provisions of the budget tabled in Parliament on November 4, 2025*, *Supra*, note 1, s. 237.1.
5. *Id*.
6. *Id*., s. 237.2(1).
7. *Id*., s. 237.2(2).
8. *Id*., s. 237.2(3)(a).
9. *Id*., s. 237.2(3)(b).
10. *Id*., s. 237.2(3)(c).
11. *Id*., s. 237.3.
12. *Id*., s. 237.4.
13. Parliament of Canada, *A second Act to implement certain provisions of the budget tabled in Parliament on November 4, 2025*, online: C-31 (45-1) - LEGISinfo - Parliament of Canada.
14. Maude Grenier and Frédéric Desmarais, “Quand la clause de jardinage tombe dans le terrier du lapin civiliste : Alice est-elle au pays des merveilles ? Histoire d’une clause possiblement restrictive,” in Service de la qualité de la profession du Barreau du Québec, *Développements récents en droit du travail (2020)*, Cowansville, Yvon Blais, 2020, p. 185.