

2024: Employment Law Mid-Year Update

Maria Constantine

June 3, 2024

2024 has been a busy year for employers operating in Canada. Legislative amendments in Ontario, British Columbia, and the federal jurisdiction have established new obligations for many employers, and there have been significant case law developments dealing with issues such as the enforceability of contractual termination provisions. In this article, we highlight some of the more notable developments in employment and labour law in Canada to date in 2024.

Statutory Changes

Ontario

Bill 149, *Working for Workers Four Act, 2024*

On March 21, 2024, [Bill 149, *Working for Workers Four Act, 2024*](#) received royal assent. Bill 149 is aimed at supporting workers and those applying for jobs in Ontario and includes important amendments to the *Employment Standards Act, 2000* (ESA) and other employment-related legislation. The amendments include the following:

- **“Trial” Employees:** As of March 21, 2024, the definition of “employee” in the ESA was revised to include individuals completing a “trial period” for an employer. As a result, employees on trial shifts are entitled to the minimum standards prescribed by the ESA, including minimum wage, overtime, and hour of work limits.
- **Vacation Pay:** Effective June 21, 2024, a written agreement is required if an employer wishes to pay vacation by any method other than (1) in a lump sum before the employee commences their vacation, or (2) on the pay day for the pay period in which the vacation falls.
- **Job Postings:** Effective on a date to be proclaimed by the government, publicly advertised job postings:
 - must include information about expected compensation or the range of expected compensation for the position;
 - must disclose the use of artificial intelligence in the hiring process (including in screening, assessing, and selecting applicants); and
 - must not include job requirements related to “Canadian experience” in the application process. This prohibition applies to associated job applications as well.

Bill 190, *Working for Workers Five Act, 2024*

On May 16, 2024, [Bill 190, *Working for Workers Five Act, 2024*](#) received its second reading. If passed, Bill 190 would amend the ESA, the *Occupational Health and Safety Act* (OHSA), and the *Workplace Safety & Insurance Act* to further strengthen workplace protections for workers in Ontario. Some of the more noteworthy proposed changes include:

- Amending the OHSA to expressly extend the application of such legislation to private residences where telework is performed;
- Modernizing the definition of harassment under the OHSA to include protection against virtual harassment, including virtual sexual harassment;
- Amending the ESA to require employers to disclose in publicly advertised job postings whether a job posting is for an existing vacancy, and to respond to job applicants that they interviewed for publicly advertised job postings within a prescribed period;
- Doubling the maximum fine for individuals convicted of violating the ESA from \$50,000 to \$100,000, which would be the highest fine in Canada; and
- Prohibiting employers from requesting that employees produce a doctor's note to substantiate their entitlement to ESA sick leave.

Currently, the government is inviting feedback on Bill 190 and has set a deadline of June 10, 2024 for the submission of comments. For more information on Bill 190, please see our prior commentary available [here](#).

Minimum Wage Increases

Effective October 1, 2024, Ontario will be [increasing the minimum wage](#) from \$16.55 per hour to \$17.20. This 3.9 per cent annualized wage increase is based on the Ontario Consumer Price Index and brings Ontario's minimum wage to the second highest in Canada.

British Columbia

Minimum Wage Increases

On March 14, 2024, Bill 2: [Employment Standards Amendment Act, 2024](#) received royal assent. Bill 2 amends the British Columbia *Employment Standards Act* by imposing automatic annual increases to minimum wage that are commensurate with inflation on June 1 of each year. The first wage increase pursuant to Bill 2 will occur on June 1, 2024, when British Columbia's minimum wage will increase from \$16.75 per hour to \$17.40 per hour.

Proposed Changes to the British Columbia *Labour Relations Code*

Cassels

On March 11, 2024, the British Columbia government introduced legislation that would amend the definition of “strike” and “person” in the *Labour Relations Code*. If passed, these changes would allow provincially regulated unionized employees in British Columbia to refuse to cross picket lines of federally regulated workers or workers regulated under another province without it being considered an illegal strike.

For more information, please review our previous commentary on this legislative development available [here](#).

Amendments to the British Columbia *Worker’s Compensation Act*

Effective January 1, 2024, British Columbia employers have a duty to cooperate and maintain the employment of certain injured workers upon their return to work under the *BC Workers Compensation Act*. In particular, employers and workers must cooperate in the worker’s return-to-work process for any injuries sustained no more than two years before January 1, 2024. Employers that regularly employ at least 20 workers must also maintain an injured worker’s employment for injuries sustained no more than six months before January 1, 2024.

For more information on these new duties applicable to employers in BC, please watch the following [Cassels Webinar](#).

Federal Jurisdiction

Accessibility Plans

The [Accessible Canada Act](#) requires federally regulated employers to consult with people with disabilities in order to identify, remove, and prevent barriers in several areas, including employment. Following such consultations, federally regulated employers with 10 to 99 employees are also required to publish their first accessibility plans by June 1, 2024.

For more information on the requirement to implement an accessibility plan, please review our prior commentary [here](#).

Enhanced Termination Entitlements under the *Canada Labour Code*

Two significant changes to the [Canada Labour Code](#) came into force on February 1, 2024, both of which will enhance employee entitlements upon termination. The first change requires employers to provide employees with enhanced periods of notice of termination, which will increase on a graduated scale as employees accrue additional years of service. The second change requires employers to provide employees with a statement of benefits upon termination, outlining their vacation pay, wages, severance pay, and any

other pay or benefits they are entitled to upon termination.

For more information on these changes, please review our prior commentary [here](#).

Right to Disconnect Policies and New Protections for Misclassified Workers

[Bill C-69, *An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024*](#), received its first reading on May 2, 2024. Bill C-69 proposes several amendments to the *Canada Labour Code* and the *Employment Equity Act*, including the following:

- **Requiring Federally Regulated Employers to Implement a Policy on Disconnecting from Work:** The policy would need to include a general rule respecting work-related communication outside of regular work hours, any exceptions surrounding the rule, and the effective date of the policy. Employers would be required to consult with employees in drafting their policy, provide a copy of the policy to every covered employee, and post the policy in a readily accessible place in the workplace. The policy would also need to be updated every three years.
- **Increasing Protections for Federally Regulated “Gig Workers” and Other Misclassified Workers:** The proposed legislative amendments would introduce a presumption under the *Canada Labour Code* that any person who is paid remuneration by an employer is an employee (subject to some limited exceptions) unless the employer can prove otherwise. Bill C-69 would also allow employees to make a complaint if they believe they have been misclassified.

Case Law Updates

Ontario Superior Court Rules that Termination Provisions Permitting Employers to Terminate Employees Without Cause “At Any Time” Contravene the ESA

In a precedent setting case, the Ontario Superior Court in [Dufault v. The Corporation of the Township of Ignace](#) held that a termination provision in a fixed-term employment agreement stating that the employer could terminate the employee’s employment “at any time” in its “sole discretion” did not comply with the ESA and was therefore unenforceable. The court cited several examples of circumstances in which the ESA prohibits an employer from terminating an employee without cause, including upon an employee’s return from a statutory leave of absence or in reprisal for an employee’s attempt to exercise a right under the ESA, meaning that employers do not have an unfettered discretion to dismiss an employee “at any time.” Accordingly, the plaintiff in *Dufault* was entitled to damages equivalent to the balance of the payments owing to her through to the end of her fixed-term employment contract.

Given the outcome in *Dufault*, Ontario employers should review the termination provisions in their employment contract templates to ensure that they do not contain similar non-compliant language that could invalidate the termination provision as a whole. For more information and our latest guidance on best practices when drafting employment agreements, please watch the Employment & Labour Group's latest webinar on this topic, available [here](#).

Ontario Superior Court Awards \$1.8 million in Damages to Retired Employee Who Was Not Wrongfully Dismissed

In [*Boyer v. Callidus Capital Corp.*](#), the Ontario Superior Court awarded Craig Boyer (who had retired from Callidus Capital Corp.) more than \$1.8 million in damages for unpaid vacation pay and compensation owing under Callidus' deferred bonus and stock option plans, even though Mr. Boyer was *not* successful in establishing that he had been constructively dismissed. The Court held that (a) Callidus' stock option plan did not specify that options would be forfeited upon an employee's retirement, (b) there was no wording in the deferred bonus plan requiring employees to be actively employed at the time of payout to be eligible to receive a bonus, nor was the employee provided with a copy of the deferred bonus plan, and (c) there was no policy limiting an employee's entitlement to carry over unused vacation time into subsequent calendar years. This case highlights the critical importance of ensuring that all employee compensation, bonus, vacation, and equity incentive plans and policies are drafted in a manner that limits employee entitlements upon departure from employment for any reason, and that all such plans and policies are communicated effectively to employees.

Ontario Court of Appeal Confirms an Employee's Refusal to Vaccinate Amounts to Frustration of Employment Contract

In [*Croke v. VuPoint System Ltd.*](#), the Ontario Court of Appeal held that an employee's refusal to comply with their employer's vaccination policy resulted in frustration of the employment contract. The employee was a systems technician who exclusively performed work for his employer's client, Bell ExpressVu. The employer had implemented its vaccination policy in direct response to a mandatory vaccination policy implemented by Bell, which required that all technicians performing work for Bell be vaccinated against COVID-19. When the employee refused to disclose his vaccination status to the employer, it meant he could no longer perform work for Bell. The court concluded that in these circumstances, frustration of contract was established, and the employee had no claim for wrongful dismissal damages. Cassels previously reported on the lower court decision [here](#) and the Ontario Court of Appeal's decision [here](#).

Cassels

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.