Cassels

2024: The Year in Review in Employment Law

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With the new year just underway, it is a good time to recap some notable changes in Canadian employment law in 2024. Several amendments to employment-related legislation that reflect the new realities of remote and hybrid work environments are now in effect. Other significant changes highlight the shift in employment law toward transparency in recruitment.

In 2024, our courts also ruled (again) on the enforceability of termination provisions. Recent case law in Ontario has provided an example of what a court considers to be an enforceable termination provision, which is welcome guidance for many employers. For employers that have not reviewed their employment contracts recently, it may be useful to consider whether your employment contracts are in line with the court's most recent pronouncements.

In this article, we highlight some of the significant legislative and case law developments from 2024 in employment law in Ontario, British Columbia, and Alberta.

Statutory Changes

Ontario

The *Working for Workers Four Act, 2024* (Bill 149), the *Working for Workers Five Act, 2024* (Bill 190) and the *Working for Workers Six Act, 2024* (Bill 229) were all enacted in 2024. These three pieces of legislation are the latest in a series of six (thus far) amendments to the *Employment Standards Act, 2000* (ESA) and other employment-related legislation in Ontario. The dates on which the changes become effective vary: some changes took immediate effect or on a set date, while other changes have yet to come into force.

Under the *Working for Workers Four Act, 2024*, as of January 1, 2026, the following notable changes will come into force:

- Employers with 25 or more employees in Ontario must include compensation information about a position on any publicly advertised job posting. This requirement applies if the position has an annual salary, or an annual salary range, of $200,000 or less. If a salary range is provided, the range cannot exceed $50,000 annually. These changes are intended to promote pay transparency and are similar to some provisions in British Columbia's *Pay Transparency Act*.

- Employers will be prohibited from requiring 'Canadian experience' in job postings that are publicly advertised, or any associated job applications. The Ontario government has not yet published regulations regarding any potential exemptions to this requirement.
- Employers will be required to include a statement on every publicly advertised job posting confirming whether the posting is for an existing vacancy and "any other information as may be prescribed". As of the date of this publication, no regulations have been published confirming what other information may be required here.
- Employers will be required to disclose the use of artificial intelligence to screen, select or assess job applicants. The regulations define "Artificial Intelligence" as a machine-based system that, for explicit or implicit objectives, infers from the input it receives in order to generate outputs such as predictions, content, recommendations or decisions that can influence physical or virtual environments.
- Employers will be obligated to retain copies of all publicly available job postings for a minimum of three years since the posting was removed.
- Employers who interview an applicant for a publicly advertised job posting must advise the applicant of whether a hiring decision has been made within 45 days of an applicant's interview (or last interview if there are multiple interviews).

For more information on *Working for Workers Four Act, 2024*, please see our previous commentary available here and here.

Under the *Working for Workers Five Act, 2024*, the following notable changes are now in effect:

- Employers are prohibited from requiring medical certificates from qualified health practitioners (i.e., doctors, registered nurses, psychologists etc.) from employees wishing to take ESA sick leave.
- The maximum fine for an individual convicted of violating the ESA has increased from $50,000 to $100,000.
- Certain definitions under the *Occupational Health and Safety Act* (OHSA) have been expanded, including:
  - "workplace", which now includes "teleworking" from a private residence; and
  - "workplace harassment" and "workplace sexual harassment", which now includes virtual harassment.

The definition of "workplace" has been historically interpreted broadly to include places where work is performed that is not necessarily the employer's premises, including remote work locations and home offices. These recent changes appear to mostly codify the previously understood definitions without significantly changing employers' obligations under the OHSA.

For more information on the *Working for Workers Five Act, 2024*, please see our previous commentary available here and here.

Under the *Working for Workers Six Act, 2024*, effective June 19, 2025, employees will have two new statutory unpaid leaves under the ESA: 1) Placement of a Child Leave; and 2) Long-Term Illness Leave.

Already in force is the new mandatory minimum fine of $500,000 for corporations that repeat offences under the OHSA within a 2-year period.

The Government of Ontario has published various news releases which outline the changes in the *Working for Workers Four Act*, *Working for Workers Five Act*, and *Working for Workers Six Act*. These resources are helpful for employers who may be impacted by these changes.

British Columbia

British Columbia *Employment Standards Act*

The *Employment Standards Amendment Act, 2024* (Bill 2) was enacted on March 14, 2024. As of June 1, 2024, the general minimum wage increased from $16.75 per hour to $17.40 per hour, which is consistent with British Columbia's average rate of inflation. This amendment also imposes automatic annual increases to minimum wage that are commensurate with inflation in British Columbia on June 1 of each year. Annual increases will be equal to the percentage of year-over-year change in the All-Items Consumer Index Price (CPI) for British Columbia.

These annual increases bring British Columbia's minimum wage in line with most other provinces and federal legislation in Canada.

Workers' Compensation Act

On June 10, 2024, the British Columbia Government added 11 new "eligible occupations" to the mental health presumption under section 135 of British Columbia *Workers' Compensation Act* (WCA). Workers employed (or who have been employed) in an "eligible occupation," who are exposed to a traumatic event in the course of their employment and have a diagnosed mental disorder are presumed to have a mental disorder caused by work-related trauma.

In order to receive compensation under the WCA, a worker is required to (a) have a medical diagnosis for illness or injury; and (b) establish, either through medical or scientific evidence, that the illness or injury arose from their employment.

Employees with a diagnosed medical illness or injury and working in (or who worked in) one of the eligible occupations are not required to satisfy the second part of the above test. Workers who are not employed in one of the eligible occupations can still submit a claim for workers' compensation benefits, however, they will have to prove that the illness/injury is related to employment.

For an abbreviated version of the above legislative changes in Ontario and British Columbia, please see our

most recent Year-End Legislative Recap.

Alberta

In Alberta, the *Employment Standards (Protecting Workers' Tips) Amendment Act, 2024* (Bill 210) is set to introduce several amendments to the Alberta *Employment Standards Code* that will, among other things:

- Codify that tips and gratuities are the property of the employee;
- Allow for employees to enter into a "tip pooling" agreement; and
- Prohibit employers from withholding, deducting, or requiring an employee to provide any part of the tips or gratuities.

Bill 210 received its first reading on December 4, 2024. If this Bill receives Royal Assent, employers in Alberta with employees who receive tips or gratuities should review their employment contracts and policies to ensure they do not contravene any of the proposed amendments.

For more information on the proposed changes to the Alberta *Employment Standards Code,* please see our previous commentary available here.

Case Law Updates

Ontario

In 2024, Ontario courts issued two significant decisions regarding the enforceability of termination provisions in employment agreements.

In *Dufault v. The Corporation of the Township of Ignace*, 2024 ONSC 1029, the Ontario Superior Court of Justice found that termination provisions which permit an employer to terminate an employee "at its sole discretion" and "at any time" violate the ESA. In particular, the Court held that, provided there is *at least one* instance in which an employee may not be terminated from employment (such as when an employee inquires about their rights under the ESA), any agreement that provides the employer with the authority to terminate at any time, and in its sole discretion, will be in violation of the ESA and, invariably, not be enforceable.

On appeal[1] brought by the employer, the Ontario Court of Appeal did not weigh in on the enforceability of the "at any time" language. The appeal was ultimately determined on the basis of the impact of the "for cause" termination provisions in Ms. Dufault's employment agreement, which were found to violate the

ESA. The Court declined to address the validity of the “without cause” provision.

In a rare win for Ontario employers, the Court in *Bertsch v. Datastealth Inc.*, 2024 ONSC 5593 upheld the termination provisions which limited the employee’s termination entitlements to the statutory minimums only. The Court in this case found that the termination clauses did not violate the ESA and, on that basis, upheld the termination provision.

For more information on this case, please see our previous commentary available here.

British Columbia

The Supreme Court of British Columbia in *Adams v. Thinkific Labs Inc.*, 2024 BCSC 1129 (*Adams*) confirmed that an offer letter is a binding agreement, and that any subsequent employment agreement is a separate agreement requiring fresh consideration to be enforceable. The Court came to a similar conclusion in *Sui v. HungryPanda Tech Ltd.,* 2024 BCSC 1856 (*HungryPanda*).

Considering the Court’s finding in *Adams* and *HungryPanda*, employers in BC are advised to avoid using offer letters that do not contain all relevant terms of employment, including an enforceable termination provision.

For more information on the *Adams* decision, please see our previous commentary available here.

In *Egan v. Harbour Air Seaplanes LLP*, 2024 BCCA 222, the British Columbia Court of Appeal confirmed that a termination provision that incorporates the requirements of the *Canada Labour Code* by reference is sufficient to displace the common law presumption of reasonable notice. The clause read as follows:

[t]he Harbour Air group may terminate your employment at any time without cause so long as it provides appropriate notice and severance in accordance with the requirements of the *Canada Labour Code*.

The Court also affirmed that when interpreting a contract, the true intentions of the parties should be determined. With this principle in mind, the Court held that there was an intention to provide some other specified notice period, and such intention was clear and unambiguous.

Employers in British Columbia should continue to carefully draft their termination provisions to ensure that they clearly and unambiguously rebut the presumption of reasonable notice at common law.

For more information on this case, please see our previous commentary available here.

Alberta

In *Sprong v. Chinook Lifecare Association,* 2024 ABCJ 163, the Alberta Court of Justice affirmed that probation clauses in employment contracts create additional obligations on termination of employment. The Alberta *Employment Standards Code* allows employers to terminate employment within the first 90 days of employment.

The Court found that a probationary employee (i.e., one subject to a probation clause in the employment agreement) can only be terminated during the probation period for "cause". In the context of a probationary employee, an employer is required to establish "proper justification" for the termination. As articulated in *Rocky Credit Union Ltd. v. Higginson,* 1995 ABCA 132, "proper justification" means:

- the probationary employee was provided a reasonable opportunity to show that they are suitable for the position;
- the employer's assessment is that the employee is not suitable for the position; and
- the decision to determine the probationary employee was based on an honest, fair and reasonable assessment of the employee's suitability.

If an employer terminates a probationary employee without adhering to the above assessment, there is a risk of a wrongful termination claim seeking damages for breach of contract. We recommend that employers in Alberta remove the probationary period provisions from their employment agreements on a go-forward basis.

For more information on this case, please see our previous commentary available here.

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[1] *Dufault v. Ignace (Township)*, 2024 ONCA 915.

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