

5 Ways New Free Trade Laws Will Impact HR Operations



Canada is made up of 14 jurisdictions, each of which has adopted its own employment laws. The existence of parallel regulations makes HR compliance more challenging, especially for companies that do business in multiple provinces. But in response to the U.S. tariffs, the federal government and many provinces have enacted new free trade and labour mobility laws aimed at economic unification via eliminating the regulatory barriers impeding the flow of goods, services and labour from one jurisdiction to the other. The legal ramifications of these free trade laws may directly affect how companies carry out HR operations like recruiting, employment contracting, payroll administration, and workplace safety.

1. Credentials Verification

Nurses, architects, electricians, and other occupations can't be practiced without a licence or other form of certification from a government regulatory agency. Certification standards vary by jurisdiction. And individuals must meet these local standards in each jurisdiction they practice. The new free trade laws remove this barrier by providing that individuals in designated regulated occupations who are certified in another part of Canada are also deemed certified in other jurisdictions that have adopted their own equivalent mutual recognition laws. Thus, a dentist licensed to practice in Ontario will also be able to ply their trade in Alberta, British Columbia, Nova Scotia, and other mutual recognition jurisdictions.

Compliance Strategy: The new mutual recognition rules will make it easier to hire Canadians with out-of-province licences. However, they don't eliminate the need to verify their credentials. Before issuing a job offer, you need to check the free trade laws of your own province to:

- Ensure that they cover the applicant's occupation.
- Verify that the applicant has the necessary comparable credentials. (Production: [Hyperlink to TOOL Credentials Verification Form](#) uploaded as a separate item to December task list)
- Determine whether any exceptions or special requirements apply.

Example: Under the new *Ontario Labour Mobility Act* "As of Right" rules, out-of-province individuals who are already certified in a designated regulated occupation by another Canadian regulatory authority must meet certain conditions to be deemed certified in Ontario, including:

- Attesting that they're in good standing in their jurisdiction.
- Attesting to their knowledge and even complete any additional exams regulators deem necessary.
- Obtaining malpractice insurance.

2. Inter-Provincial Secondments

The new rules may make it easier to enter into so-called [secondment](#) arrangements in which an employer temporarily assigns an employee to work for another part of the company in a different province. Such agreements enable companies to transfer employees with specialized skills, training, or knowledge to locations and operations where they're needed on a temporary basis, e.g., to cover for a strategic employee taking a leave of absence. The seconded employee continues to be employed by the seconding employer with the expectation of returning to their original position when the secondment ends.

Compliance Strategy: The secondment agreement should include language clearly stating that the employment, OHS and other laws of the host location govern the terms of the secondment.

Model Language

This Agreement is governed by the laws of [jurisdiction to which the employee is seconded]. The Employee acknowledges that minimum employment standards, occupational health and safety requirements, and workers' compensation obligations applicable to work performed in another Canadian province shall apply to the extent required by law.

The employee's employment agreement should also:

- Acknowledge the company's right to second the employee "as may be required, from time to time, to perform services in other Canadian provinces in accordance with business needs, subject to applicable legal, regulatory, licensing, and compliance requirements."
- Require the employee to secure, maintain and comply with all licences, certifications, registrations, or authorizations required to perform seconded services in any province in which work is performed.
- Promptly notify the company of any restrictions, suspensions or conditions affecting those credentials.

3. Payroll Administration

Although labour will be more mobile under free trade, most aspects of cross-jurisdiction employment will still be governed by provincial laws, including payroll and employment standards. And as with occupational certification, payroll, and employment standards laws vary by province.

Compliance Strategy: Before hiring or contracting with individuals from a different province, companies must determine what's considered the "[province of employment](#)" for payroll purposes and then comply with that province's laws regarding source deductions, minimum wages, overtime, vacation benefits, statutory holidays, leaves of absence, and other employment standards entitlements. HR and payroll also need to confirm and maintain alignment with CPP, EI, income tax, and other applicable federal requirements.

4. Workplace Safety

Employees who work for companies in other jurisdictions will generally have the workplace safety protections and rights provided for under the OHS laws to which the host company is subject. Similarly, their employer will also have the same OHS duties vis-à-vis those out-of-province employees as it does to its other employees.

Compliance Strategy: Determine which jurisdiction's OHS laws apply—which will normally be the province where the work is performed. Also be aware that while OHS requirements overlap from jurisdiction to jurisdiction, there may also be significant differences including with regard to [incident reporting](#), [work refusal rights](#), and [obligation to pay for required PPE](#). One of the first questions to ask: Does the out-of-province employee have all the [training or certifications](#) that the OHS laws require to perform the particular job, e.g., first aid, forklift operation, electrical work, etc.?

5. Workers' Comp & Return-To-Work

Cross-jurisdiction employment may also lead to workers' compensation misalignments that compromise an employee's coverage and subject the employer to penalties.

Compliance Strategy: As with other employment laws, the place where the work is actually performed determines which province's workers' comp rules apply. Such rules directly impact not just the employee's coverage and benefits but also how the employer calculates its annual payroll assessments and the [return-to-work](#) and [re-employment rules](#) the employer must follow if the employee wants to go back to work after missing time due to a work-related injury.