

New Laws: The 6 Biggest HR Compliance Challenges of 2020



Significant new laws in the pipeline will make HR compliance particularly challenging in the year ahead. Here are the 8 most important new laws that you need to know about and prepare for.

1. Expanded Parental & Maternity Leave Rights

In 2018, the federal government expanded the parental and maternity leave rights and benefits under the EI program. Since then, all jurisdictions have revised (or in the case of Newfoundland, is in the process of revising) extending the number of weeks of parental, maternity and combined parental/maternity leave under their own employment standards laws so that employees can take advantage of those new federal benefits.

2. New Family & Personal Leave Rights

In addition to coordinating with federal EI changes, most jurisdictions have added new (or expanded current) new forms of leave, including paid leave in some cases, for family and personal commitments, including:

- Domestic or interpersonal violence (all jurisdictions except Nunavut and Yukon);
- Family caregiving and/or compassionate care;
- Personal emergencies; and
- Child death or disappearance.

3. Other Province-Specific Employment Standards Changes

Most jurisdictions have also made other significant changes to their employment standards laws over the past 2 years:

- **Federal:** New restrictions on hiring unpaid interns, employment protections for temps and administrative monetary penalties for employment standards offences;

- **Alberta:** New minimum wage for students;
- **BC:** Extension of ESA overtime, vacations, stat holiday, termination and recall provisions to collective agreements, new limits on wage deductions and expanded government enforcement powers;
- **Manitoba:** Elimination of need for government permit to enter into overtime averaging;
- **Ontario:** Restoration of pre-Bill 148 vacation pay and scheduling rules, elimination of need for permit to average overtime and new ESA poster rules; and
- **Québec:** New rules making it easier for employees to qualify for vacation and stat holiday pay, and expanded psychological harassment protections.

Employment Standards Flip-Flops in Ontario & Alberta

In 2018, a newly elected Conservative government in Ontario adopted “Restoring Competitiveness” legislation revoking pro-employee “Fair Workplaces” ESA changes adopted by its Liberal predecessor with regard to minimum wages, work scheduling and calculation of vacation pay. In 2019, the pattern repeated itself in Alberta where the new Conservative government passed legislation cancelling Bill 17 changes favouring employees and restored previous rules regarding overtime banking, minimum wages and vacation and stat holiday pay calculation.

4. New Pay Equity Laws

While paying women less than men for equivalent work is illegal in all parts of the country, geography plays a major role in how the rule is enforced. In most jurisdictions, the system is passive and nothing happens unless and until employees bring complaints. Ontario and Québec totally changed the model by passing legislation requiring employers to not only avoid gender-based pay discrepancies but also take proactive measures to identify and eliminate them. On January 1, 2020, the federal jurisdiction became the latest to adopt a pay equity law. And several other provinces are considering doing the same.

5. Strict New Workplace Harassment Requirements

Since Jan. 1, 2019, 8 of Canada’s 14 jurisdictions have or are in the process of adopting new workplace harassment requirements. There are 2 models:

- **The 6 catch-up jurisdictions:** In NB, NL, PEI and the 3 territories where OHS harassment regulations didn’t previously exist, employers are being asked to take the same basic measures required of Ontario employers under what was once called Bill 168 adopted nearly 10 years ago, i.e., harassment codes of practice, complaint mechanisms, investigation and reporting procedures and harassment training;
- **The 2 state-of-the-art jurisdictions:** QC and the federal jurisdiction, where workplace harassment protections already existed, are advancing beyond the Bill 168 model with new requirements for impartial investigation, mediation and dispute resolution, stronger privacy protections and other rights to ensure harassment victims get justice from their employers.

New Workplace Harassment Laws (2019-2020)

Jan. 1, 2019: Bill C-65 takes effect for federally-regulated employers
Jan. 1, 2019: Expanded Bill 176 psychological harassment protections take effect in Québec
March 29, 2019: New WSCC workplace harassment Code of Practice takes effect in Northwest Territories and Nunavut
April 1, 2019: New OHS workplace harassment and violence regulations take effect in New Brunswick
June 30, 2019: Hearings on adding new workplace harassment and violence requirements to OHS regulations end in Yukon
Jan. 1, 2020: New OHS workplace harassment and violence regulations take effect in Newfoundland
Jan. 1, 2020: New standalone workplace harassment regulation takes effect for federally-regulated employers
July 1, 2020: New OHS workplace harassment regulations implementing Bill 42 take effect in PEI

6. Evolving Rules for Controlling Drugs in the Workplace

In the wake of the 2018 legalization of cannabis, courts continue to issue new rulings clarifying the rules governing drug testing, accommodations and other issues pitting workers' individual rights against employers' need to ensure a safe workplace. The cases were pretty evenly divided this year, with most of the cases turning on the fairness of the employer's disciplinary and testing procedures. Thus, for example, a Northwest Territories arbitrator reinstated a social welfare worker fired for drinking on the job because the employer didn't ask or consider whether he had an alcoholism-related disability [*Union of Northern Workers v Govt. of the Northwest Territories*, 2019 CanLII 18391 (NT LA), Feb. 19, 2019]. By contrast, a Federal arbitrator upheld the firing of a train engineer who tested positive for cocaine after derailment incident because the employer did consider whether he was addicted and the evidence showed he was just a casual user [*Teamsters Canada Rail Conference v Canadian Pacific Railway*, 2019 CanLII 89682 (CA LA), September 22, 2019]. Other key cases:

Employer Wins

- Alberta tribunal okays firing cement operator for refusing to undergo a medical assessment after testing positive for drugs and admitting to use of prescribed medical cannabis [*Bourassa v Trican Well Service Ltd.*, 2019 AHRC 13 (CanLII), May 2, 2019];
- Ontario arbitrator says employer can fire personal support worker for reneging on promise to submit to random drug testing as part of a return to work agreement [*Regional Municipality of Peel and Community Workers The Sheridan Villa v Canadian Union of Public Employees, Local 966*, 2019 CanLII 91782 (ON LA), September 26, 2019];
- Newfoundland court finds no disability discrimination in refusing to hire admitted medical cannabis user for safety-sensitive construction job [*IBEW, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc.*, 2019 NLSC 48 (CanLII), Feb. 22, 2019].

Employer Loses

- Ontario arbitrator reinstates worker fired for refusing fitness for duty

drug test because there was no reasonable cause for performing the test [*Toronto Transit Commission v Amalgamated Transit Union, Local 113*, 2019 CanLII 36521 (ON LA), April 24, 2019];

- BC arbitrator nixes firing of housekeeper caught with booze in her lemonade bottle while she was on last chance agreement because there was no proof she actually drank it at work [*Harrison Hot Springs Resort v Unite Here, Local 40*, 2019 CanLII 28162 (BC LA), March 11, 2019]; and
- Newfoundland arbitrator temporarily bars helicopter transport company from implementing random drug test policy for safety-sensitive workers because the latter's privacy interests outweighed the former's safety interests [*Office and Professional Employees International Union v Cougar Helicopters*, 2019 CanLII 66726 (NL LA), July 12, 2019].