The 7 Most Immediate HR Compliance Challenges of 2021



During the COVID crisis, legal slip-ups can get your business shut down.

As the misery of 2020 winds down, HR directors need to start looking ahead to 2021. Of course, complying with new laws is a perennial challenge. But the stakes are much higher in 2021, particularly in the realm of COVID-19 where legal SNAFUs can literally result in the shutdown of your business. The good news is that we at HRI have been thinking ahead. And we've mapped out a to-do list of the most immediate compliance challenges you'll face in the coming year along with links to resources on the HRI website that you need to overcome each of them.

Challenge 1. Complying with COVID-19 Workplace Public Health Requirements

Challenge: The primary compliance challenge that all organizations face heading into the new year will be to prevent COVID infection in your workplace. At stake is not merely the risk of steep penalties but the right to keep your business open. OHS and public health inspectors are out in force in most jurisdictions with orders to close down non-essential businesses that aren't abiding by the workplace screening, social distancing and other mandates contained in government emergency decrees and public health guidelines (which we'll refer to collectively as "guidelines").

What To Do: Implement a COVID-19 Re-Opening Plan that provides for:

- COVID-19 hazard assessment and field level hazard assessment;
- Medical screening of employees and essential visitors—note that revised guidelines of some jurisdictions require screening not just before entry but also on a regular basis while employees and essential visitors are at the site;
- Contact tracing so you know who to notify if an employee or essential visitor tests positive for COVID;
- Social distancing;
- Mandatory face masks or face coverings when social distancing can't be maintained; and
- Stepped up cleaning and disinfection of workplace surfaces and frequently touched objects like doorknobs, faucets and keyboards.

Challenge 2. Effectively Managing Telecommuters

Challenge: Almost 4 in 10 Canadian workers (39%) did their job from home at the height of the first COVID outbreak in April. As the second outbreak converges with flu season, that number will likely grow in the early part of 2021. And it's not just about pandemic. The telecommuting surge is a long-term social trend that has building for over a decade. However, telecommuting relationships also pose unique problems in terms of health, safety and productivity. As HR director, you have a direct role to play in helping your organization overcome these challenges.

What To Do: The starting point for organizations that allow employees to work from home is to create a legally sound policy and procedure for approving, overseeing and, if necessary, terminating telecommuter arrangements. In addition to logistics and performance, make sure your telecommuting policy and arrangements also account for technological and health and safety issues, including either in-person or virtual inspection of the home workspace.

Challenge 3. Helping Employees Balance Their Parenting and Work Responsibilities

Challenge: The closure of schools and daycare centres in the wake of COVID-19 has intensified the perennial problems of accommodating parents with childcare responsibilities. A threatened new wave of closures is likely to bring matters to a head this winter as parents insist on staying home to take care of their kids.

What To Do: Try to let employees work from home temporarily until the childcare crisis rides out. But if that's a problem, you'll be in a position to make legally sound decisions if you keep these 2 things in mind:

- Employees have a legal right to stay home and care for their kids if schools and daycare centres are closed and they have no other caregiving options. The same is true if their kids come down with COVID. The reason for this is that 11 of 14 jurisdictions have adopted special COVID (or, in some places, public health emergency) employment standards leave covering this situation.
- Employment standards leave may not apply if the schools are open and the child is well. However, you may still have an obligation to accommodate the employee's childcare needs under human rights laws. However, you don't have to make accommodations that would impose undue hardship. And based on court cases, it's clear that an employee's personal preferences in childcaring arrangements isn't enough to make the requested accommodation reasonable, especially when there are viable alternatives available.

Challenge 4. Dealing with COVID-19 Work Refusals

Challenge: Since the pandemic began, hundreds of workers across Canada have invoked their OHS work refusal rights due to COVID fears. So, you need to be prepared in case one or more of your own workers does likewise.

What To Do: Although each case is different, there are some clear principles that apply to COVID work refusals that you need to be aware of. The bottom line is that government OHS officials that have applied these principles in actual cases during the pandemic have ruled against the refusing worker in almost every instance. Summary of the rules:

1. Fear of a contagious virus like COVID-19 can be grounds for a work refusal;
2. Work refusals aren't allowed for hazards that are a normal part of the job, which makes it difficult for healthcare workers to bring a refusal;
3. While catching COVID is a hazard, just being at work near other people isn't enough to justify a work refusal—the hazard must be "undue";
4. As long as you follow the current COVID public health requirements, your workers will have hard a time persuading an OHS officer that they have a valid refusal;
5. One notable exception is workers that have asthma, weakened immunity systems or other physical problems or characteristics that make them more susceptible to infection. For such workers, simply being at work may pose an undue hazard, even if you take all the required public health measures.

Challenge 5. Accounting for COVID-19 Relief Assistance

Challenge: If your organization received Canada Emergency Wage Subsidy (CEWS) or other payments under any of the other multiple federal and provincial/territorial relief programs for businesses affected by COVID-19 that sprung up across the country this year, you face the challenge of accounting for that money.

What To Do: As part of your year-end process, verify that you have all the documentation you need to demonstrate compliance with the eligibility requirements and rules of each relief program in which you participated in case you're audited. All employers also have to use the new CRA codes in completing their 2020 T4 slips relating to eligibility for CEWS, CERB and CESB payments.

Challenge 6. Revising Your Workplace Harassment and Violence Policies

Challenge: In the past year, no fewer than 6 jurisdictions have adopted tough new workplace harassment and violence requirements—FED, NB, NL, PEI, QC, YK. Of these, the most cutting edge model is the new federal Bill C-65 rules which officially take effect on January 1, 2021. So, if your company is federally regulated, you have a lot of work to do. However, because it's so advanced, C-65 represents a best practice standard for employers in all jurisdictions.

What To Do: Key components of the Bill C-65 compliance checklist that also represent best practice in other jurisdictions include:

- Performing and regularly reviewing a combined workplace harassment and violence hazard assessment;
- Creating an appropriate workplace harassment and violence prevention policy; and
- Creating new procedures for receiving, investigating and resolving complaints of workplace harassment and violence.

Challenge 7. Reviewing Your Substance Abuse and Drugs/Alcohol Testing Policies

Challenge: The litigation wars between employers and unions over workplace drugs and alcohol use and testing have heated up in the 2 years since Canada legalized recreational marijuana, resulting in a number of significant court rulings that have potentially game-changing effects.

What To Do: If you haven't done so recently, you need to review your substance and testing policies to ensure they're in line with current legal parameters. Here's a 3-step strategy utilizing resources available on the HRI website:

1. Review the HRI summary of all of the key Canadian alcohol and drugs cases decided in the 2 years since legalization;
2. Use the HRI fitness for duty analysis to vet your current substance abuse policy and the HRI policy template to revise it; and
3. Use the HRI drug testing policy analysis to vet your testing policy and the HRI policy template to revise it.