

# The 9 Most Important HR Laws of 2020



Workplace harassment and violence reform, counter-reform in Alberta and infectious illness leave were among the top stories.

The most important HR laws of 2020 were clearly the COVID-19 relief laws. ‘Gun to the head, the Canada Emergency Wage Subsidy (CEWS) was probably the most impactful law of the year in terms of jobs saved. For direct relief to employees, no law was more important than the Canada Emergency Relief Benefit (CERB). The second big story is how most provinces and territories stepped to the plate to supplement CEWS, CERB and other benefits and by amending their employment standards laws to provide unpaid leave to workers who had to miss time due to COVID-19 and extend temporary layoff windows to give financially strapped companies more time to recover and recall their workers.

However, COVID-19 response was and remains largely a series of reactive and temporary measures. This analysis focuses on changes to HR law that evolved outside the COVID context in response to long-term changes and developments in the realm of employment and labour relations. Here are what we believe to be the 12 most significant of these new laws from 2020.

## **1. C-65 and Other New Workplace Harassment and Violence Laws**

No fewer than 4 jurisdictions adopted sweeping new workplace harassment and violence laws. However, the most important new workplace harassment and violence law were the OHS regulations implementing federal Bill C-65. Unlike Newfoundland, PEI and Yukon, where the impetus was to bring out-of-date regulations into line with the rest of the country, C-65 advanced the regulatory model for workplace harassment and violence prevention. In addition to [combining the concepts of harassment and violence](#) into a larger psychological safety concept, [C-65](#) imposes a progressive new set of procedural rules to ensure that internal complaints are [investigated and resolved](#) swiftly and fairly, including the requirement that employers appoint a third person “designated representative” to receive complaints in case workers aren’t comfortable bringing complaints to the employer.

## **2. Federal Pay Equity Laws**

Pay disparities on the basis of sex are illegal in every part of Canada under human rights and, in some jurisdictions, employment standards laws. But these are passive laws that don’t come into play unless and until somebody brings a complaint. By contrast, [pay equity laws](#) require employers to not only refrain from but also

actively monitor, identify and implement plans to root out pay gaps and ensure equal pay for equal work. As 2020 began, pay equity laws took effect in the federal jurisdiction. Other provinces that have adopted pay equity laws covering the private sector include Québec, Ontario and, to a limited extent, Nova Scotia.

### **3. Alberta Bill 32 Pro-Employer Employment Standards Changes**

Employment standards and labour relations laws have become a political football in Alberta. It began in 2017 when the province's then Liberal government adopted legislation (Bill 17, aka, *Fair and Family-Friendly Workplaces Act*) making sweeping, employee-friendly changes to employment and labour laws. Two years later, an abrupt change in direction occurred when Alberta's newly elected Progressive Conservative government passed pro-employer "Open for Business" legislation peeling back parts of Bill 17. This July, the PC government renewed its counteroffensive on July 7 by tabling Bill 32, *Restoring Balance in Alberta's Workplace Act* making sweeping changes to both the ESC and labour relations laws, effective November 1.

Key Bill 32 [employment standards changes](#) include permanent extensions to temporary layoffs, overtime averaging and time for paying final earnings upon termination, the employer's right to impose compressed work week arrangements unilaterally and elimination of the need to get employees' consent to deductions for overpayments. Key labour relations changes include new LRB powers to limit picketing and order suspension of employees' union dues payments during illegal strikes along with new restrictions on issuing remedial certification as well as employees' right to opt out of union dues for political activities, charities and social causes.

### **4. Alberta Bill 47 Pro-Employer Workers Comp Changes**

The pattern of Alberta-Conservative-government-undoes-Liberal-predecessor-work-reforms played out on the OHS and workers comp side via the Dec. 9 adoption of Bill 47, aka, the *Ensuring Safety and Cutting Red Tape Act, 2020*. In addition to imposing new limits on work refusals, the legislation eliminates the controversial requirement that employers to reinstate injured workers with over 12 months' service and the presumption that psychological injuries are work-related (except for first responders, correctional officers and emergency dispatchers) and restores the insurable earnings cap to either 90% of a worker's net earnings at time of injury or a maximum set by WCB (\$98,700 for 2021).

### **5. New Emergency Infectious Illness Leave Rights**

Since the pandemic began, 12 jurisdictions (NS and NU are the lone exceptions) have revised their employment standards laws to provide unpaid leave for employees who must miss work due to COVID. The difference is that in 7 jurisdictions—MB, NB, NL, NT, ON, PEI, SK—these changes are permanent and apply to not just the immediate COVID situation but any form of infectious illness for which a public health emergency is in effect.

### **6. New Federal Protections for Unpaid Interns**

Fulfilling a campaign promise, on September 1, the Trudeau government implemented new regulations specifying that certain federal labour standards protections apply to unpaid interns, including the 40 hours per week and 8 hours per day work limits, the right to 1 day of rest per week and a modified work schedule, unpaid breaks for every 5 hours of work, 96 hours advance notice of schedule and 24-hours' notice of shift changes, 8-hour rest periods between shifts, 9 general holidays within a calendar year and maternity-related reassignment rights.

## **7. BC Bill 23 Workers Comp Reform**

In August, BC passed its most comprehensive workers comp reform legislation in over 2 decades. Highlights of [Bill 23](#) include increasing the maximum insurable earnings on which benefits are based from \$87,100 to \$100,000, allowing WorkSafeBC to determine a worker's retirement date so that loss-of-earnings benefits end when worker is nearing age 65, rather than at time of injury to better determine if someone may work past age 65 and keep getting benefits, authorizing WorkSafeBC to provide preventive medical treatment before accepting a claim and simplifying benefits claims for workers who contract viruses on the job.

## **8. BC Bill 23 Enhancement of OHS Enforcement**

[Bill 23](#) also beefs up OHS enforcement by, among other things, giving WorkSafeBC authority to go to court to get a warrant to collect samples, search hard drives, seize or compel documents and carry out other searches and seizures during investigations to determine whether to prosecute an employer for an OHS violation. It also allows courts to hear victim impact statements during an OHS prosecution, and order convicted employers to publish details about their OHS offences, such as what violations they committed and the penalties they face, an embarrassment mechanism designed to deter other employers from breaking the law.

## **9. Nova Scotia Adopts New Pay Transparency Protections**

In March, Nova Scotia became the second province to pass legislation banning employers from discriminating against employees for discussing or revealing their own or another person's wages to others in the workplace. Ontario adopted a similar law but it hasn't yet taken effect. [Bill 221](#) also bans employers and HR from asking about an employee or job applicant's salary history except in limited circumstances. It also extends the *Labour Standards Code* ban on sex-based pay differentials for substantially the same work in the same establishment to employees who don't self-identify as male or female and allows the government to impose administrative monetary penalties for violations.