The Top 10 HR Compliance Cases of 2024

> The term “employment law” makes most HR directors think of statutes and regulations like the Employment Standards Act or Human Rights Act. These associations are perfectly valid. Much if not most of the legal requirements that companies and their HR directors must navigate do come from these sources. But there’s another major source of employment law that tends to get overlooked, namely, case law or rulings by courts, arbitrators and tribunals hearing disputes, typically pitting employers against employees and their unions. These rulings are essential because they show how the law plays out in real-life situations. As is true every year, there were many significant employment law cases in 2024. Here’s a briefing on what we believe are the 10 most important cases and their practical implications for your own company and employment activities.

1. BC High Court Opens Path for Bad Faith Money Damages Lawsuits against Employers

In terms of potential impact, the most significant HR compliance case of 2024 may be the ruling by the BC Court of Appeal opening a potential new avenue of litigation in the form of employee damages lawsuits against employers for showing bad faith during the employment relationship. It began when the BC government fired a senior Ministry of Health official for her role in the controversial termination of employees for alleged misuse of private healthcare data. The official, who had received “glowing performance reviews” during her tenure, claimed she had been scapegoated and sued for breach of good faith both at termination and on an ongoing basis during her employment. The government argued that the employer duty to show good faith exists **only at time of termination.** But the court allowed the official to go bring the claim and the case reached the BC Court of Appeal, which held that a case could, in fact, be made that the duty of good faith applies not only at the end but also **during the** employment contract and that the official deserved a chance to prove her claim at trial [*British Columbia v. Taylor*, 2024 BCCA 44 (CanLII), February 6, 2024].

Takeaway & Impact on You: Under current law, employees who exhibit bad faith during the termination process can be held liable for *Wallace* and other extraordinary damages. The *Taylor* case is saying that these good faith duties may also apply to how employers behave **during the** employment relationship – and not just how they end it. The ruling just means that the claim can now go to trial. But assuming the case

doesn't settle, the risk is that courts in BC will issue a ruling officially accepting the new duty of good faith during employment. And that would open the door to bad faith lawsuits against employers for just about any decision that has a negative effect on an employee, such as denial of a raise, promotion, or bonus. To avoid such liability risks, employers must be extra sensitive to the risk of poison work environments and as transparent and honest as possible, particularly when making decisions or taking actions that have an economic impact on employees.

2. Employer Can Make Telecommuters Pay Costs of Maintaining Their Home Workspace

The employee's right to work from home has become a major source of HR compliance litigation since the pandemic. Many of these cases are union grievances challenging employers seeking to impose new HR policies purporting to limit telecommuting rights. There were 2 key rulings in 2024, both of which went against the union. The first case came from Ontario and involved a union's contention that a city's work from home policy making employees responsible for the costs of preparing and maintaining their home workspace was unreasonable and in violation of the collective agreement obligation that the employer pay for the costs of the physical workplace and necessary work materials. The arbitrator disagreed, reasoning that the city allowed employees to take the necessary technology and office chairs from their workplace to their home space and that the money employees saved on not having to commute more than offset the incremental costs for pencils, pens, and other minor supplies [*The Corporation of the City of London v London Civic Employees Local 101*, 2024 CanLII 28841 (ON LA), March 22, 2024].

Takeaway & Impact on You: Under current employment law, the employer has the power to determine where work is performed. To the extent telecommuting agreements exist, it's only because employers allow them to. Employers are also entitled to dictate the terms and conditions of the arrangement; in a unionized workplace, those terms and conditions may be subject to collective bargaining. In either case it's essential for employers to establish and implement a clear, thorough, and specific written policy for telecommuting agreements.

3. Company Doesn't Need Union's Permission to Limit Work-from-Home Arrangement

The year's second major telecommuting ruling was a federal case that began when TELUS Communications declared a new return to work policy requiring Customer Experience Agents that had been allowed to work from home to come to the office at least 3 days a week. TELUS also announced the shutdown of an Ontario call center, a move that forced agents in the province to relocate 150 km to the firm's Montreal office. None of this sat well with the union. The federal arbitrator sided with TELUS, noting that the work from home arrangement had been subject to extensive negotiation over the years and that TELUS had repeatedly made unilateral modifications to the policy without negotiating them with the union. Nor was it unprecedented for TELUS to implement unilateral workforce reduction measures, which, until now, went largely unopposed by the union [*Telus Communications Inc. v Telecommunications Workers Union, United Steelworkers Local Union 1944,* 2024 CanLII 106321 (CA LA), October 28, 2024].

Takeaway & Impact on You: One of the most contentious issues in telecommuting is whether an employer can end or impose new limits on the arrangement. The general rule is that employers may end or limit current arrangements, provided that no legal limits apply. The main source of these limits is terms of the collective agreement or, if the workplace isn't unionized, individual employment contracts and policies.

However, employees may also claim that the employer committed constructive dismissal. That's why it's crucial for HR directors to help their companies recognize and steer clear of the risks of constructive dismissal when ending or imposing new limits on their current remote work and telecommuting arrangements.

4. Being Pregnant Doesn't Automatically Give Employee Right to Work from Home

Another telecommuting rights case with significant ramifications involved a pregnant employee experiencing intense morning sickness who requested permission to work from home during her pregnancy, as recommended by her doctor. The company said no. Its reasoning: Since the employee was too ill to come to and stay at work, she should use her sick days instead. The union claimed that the company violated its duty under human rights law to make reasonable accommodations for the employee's illness, but the Ontario arbitrator tossed the grievance. Human rights and case law make it clear that pregnancy is not an illness; however, it may be a valid health-related reason for an absence. The company was supportive of the employee's medical issues and prepared to give her the sick leave to which she was entitled. By contrast, the employee wasn't legally entitled to work from home. "There is no fundamental right to work from home," the arbitrator emphasized. Accordingly, the company's denial of her work from home request wasn't adverse treatment that an employee must prove for purposes of making out a case for discrimination [I.B.E.W. Local 636 v Hydro Ottawa Limited, 2024 CanLII 78770 (ON LA), August 21, 2024].

Takeaway & Impact on You: Although pregnancy may not be a ticket to work from home, it does have significant ramifications under not just human rights but also employment standards, OHS, and other laws. That's why it's essential to create and implement a legally sound policy for treatment of employees who are pregnant.

5. Gig Workers' Class Action Lawsuit Against SkipTheDishes Gets Greenlight in Manitoba

Class action lawsuits by gig workers who don't qualify as "employees" protected by employment standards laws represent the new wave of HR litigation. Taking a page from their Uber brethren, couriers working for SkipTheDishes Restaurant Services filed a class action against their employer. The company asked the court to dismiss the case, citing the provision of individual courier contracts banning class actions and providing that all disputes would be resolved via arbitration. The lower court found the arbitration clause unconscionable and unenforceable because the company forced the contract on couriers without any negotiation by making them click YES to accept the terms to keep getting gigs from the company. Manitoba's highest court, the Court of Appeal, upheld the ruling and ordered Skip to pay the costs of the appeal [*Pokornik v SkipTheDishes Restaurant Services Inc*, 2024 MBCA 3 (CanLII), January 12, 2024].

Takeaway & Impact on You: As many as 20% to 30% of all Canadian workers engage in some form of "gig work," like driving, freelance writing, developing websites, and even pet-sitting. So, it's only a matter of time before your company partakes in the new gig economy, if it doesn't already. As an HR director, it's incumbent on you to ensure that your employment relationships with gig workers comply with applicable legal requirements. The stakes are high, as exhibited by *SkipTheDishes* and other major class actions. To ensure compliance, you need to understand the current state of the law on gig employment in Canada, a full briefing you'll find on HR Insider.

6. Federal Court Okays Random Drug Testing of "Safety-Critical" Nuclear Plant Workers

Drugs and drug testing are a perennial source of crucial litigation pitting the employer's duty to ensure a safe workplace against the employee's rights to privacy. One of the year's biggest cases was the latest round in the Canadian Nuclear Safety Commission's (CNSC) ongoing battle with the unions over new regulations requiring nuclear power plants seeking Class I licences to perform pre-placement and random alcohol and drug testing on "safety-critical workers." In 2023, a federal court ruled against workers who claimed the testing policy violated their Charter privacy rights. In this most recent ruling, the Federal Court of Appeal rejected the workers' appeal, finding that it wasn't "erroneous" for the lower court to conclude that the policy was reasonable and well within the CNSC's regulatory powers and reject the workers' Charter claims [*Power Workers' Union v. Canada (Attorney General*), 2024 FCA 182 (CanLII), November 6, 2024].

Takeaway & Impact on You: Keeping drugs and alcohol out of the workplace has become even more challenging since Canada legalized recreational cannabis. Bottom Line: You have not only the right but also the duty to ensure employees don't perform their jobs while they're impaired, especially in a safety-sensitive workplace. But there must also be a legal foundation that's fair and respectful of workers' privacy and other legal rights. The best way to strike the right balance is to implement a legally sound Workplace Substance Abuse Prevention and Compliance Game Plan that includes:

- A Fitness for Duty Policy; and
- A Drug and Alcohol Testing Policy.

7. Employee's Failure to Disclose Drug Addiction Doesn't Excuse Employer's Duty to Accommodate Drug Addiction

Adding to the complexity of regulating workplace substance abuse is that under human rights laws, alcohol/drug addiction and dependency are deemed "disabilities" for which an employee or job applicant is entitled to reasonable accommodations. An important 2024 case involving this rule began when Canadian Pacific fired an engineer for abusive conduct toward hotel employees during a business trip stay. While conceding that the engineer engaged in harassment, the union claimed that he was drunk and sued CP for failing to accommodate his alcohol addiction. We didn't know the engineer had such an addiction because he never disclosed it, CP countered. The federal arbitrator sided with the union. An employee's failure to disclose their addiction doesn't relieve an employer of its duty to make reasonable accommodations. Addicts routinely deny and lie to cover up their evictions, the arbitrator reasoned. With the union having made out a legal case that the engineer was entitled to accommodations, the burden shifted to CP to show that accommodation was impossible without undue hardship. And since CP didn't meet that burden, it had to reinstate the engineer [*Canadian Pacific Kansas City Railway v Teamsters Canada Rail Conference*, 2024 CanLII 121066 (CA LA), November 25, 2024].

Takeaway & Impact on You: While testing remains crucial, many companies now ask employees to self-disclose their alcohol/drug problems. This non-disciplinary approach recognizes that substance abuse is a problem, not a form of misconduct, and that the goal should be to ensure that employees who come forward voluntarily get the help they need. Then if employees don't take the offered amnesty and later test positive, you can discipline them. The moral of the federal case is that failure to take amnesty doesn't allow you to treat dependent employees as "common criminals" and

discipline the way you would recreational users. The duty to accommodate to the point of undue hardship still applies and you need to understand how far you must go in accommodating dependency and addiction.

8. Ontario Makes First Ruling on New ESA Electronic Monitoring Policy Rule

In 2022, Ontario amended the *Employment Standards Act* to require employers with 25 or more employees to implement a written policy regarding electronic monitoring of employees. An addiction services provider adopted a new electronic monitoring policy (EMP) in an attempt to comply with the new requirement, but the union claimed the policy was unreasonable. The Ontario arbitrator disagreed, finding that the EMP's provisions regarding the monitoring of personal computers, cellphones, emails, and Internet use were all "reasonable exercises of management rights." The vulnerability of the employer's clients and its "clear legal obligation" to protect the confidentiality of their personal health information and identity made the need for security and monitoring very high, the arbitrator reasoned [*Ontario Public Service Employees Union v Rideauwood Addiction and Family Services*, 2024 CanLII 120507 (ON LA), December 9, 2024].

Takeaway & Impact on You: This is the first reported case addressing the validity of an electronic monitoring policy implemented by an employer in response to the recent ESA changes. The ruling illustrates the importance of ensuring that digital solutions used to monitor employees remain within personal privacy boundaries and, if you're in Ontario, implementing a legally sound electronic monitoring policy that meets the ESA requirements.

9. Secretly Taping Coworkers Not Always Just Cause to Terminate, Says Alberta Court

Privacy and electronic monitoring were also the focus of another key 2024 ruling, only in this case the roles were reversed with the employee and not the company doing the monitoring. The role of employer was played by an accounting firm that claimed it had just cause to terminate a VP of Product Development and Innovation for secretly recording company meetings without the participants' knowledge or consent. But the Alberta court refused to dismiss the VP's wrongful dismissal case. While courts in other cases have found secretly recording conversations to be just cause, the key difference was that the firm's code of conduct and confidentiality agreements in this case didn't expressly ban such recording. In addition, there was evidence that the firm's prior president advised the VP to record his conversations with a coworker with whom he was experiencing difficulties. As a result, the case had to go to trial [*Wan v. H&R Block Canada Inc.*, 2024 ABKB 734 (CanLII), December 10, 2024].

Takeaway & Impact on You: The rules governing whether employers can terminate employees for secretly recording company meetings and business conversations are tricky and the case law is divided. Of course, the best way to deal with the issue is not to go to litigation but to take proactive steps to prevent it by implementing a legally sound policy restricting employees' use of recording devices in the workplace.

10. Ontario Tribunal Draws New Line on Employer's Duty to Investigate Harassment

As usual, workplace harassment was a heavily litigated issue in 2024. One significant

case that flew under the radar was brought by a fitness worker who complained to her employer about being sexually harassed by a coworker. The problem is that she didn't do so until more than 6 months after she was terminated. Consequently, the employer contended it had no obligation to investigate the complaint. The Ontario Human Rights Tribunal agreed and dismissed the harassment complaint. Failure to investigate a harassment complaint is normally a violation of an employee's right to be free from discrimination in the workplace, the Tribunal reasoned; but that's not the case when the employee is no longer in that workplace [*Rougoor v. Goodlife Fitness Centres Inc.*, 2024 HRTO 312 (CanLII), February 28, 2024].

Takeaway & Impact on You: Workplace harassment has become an increasingly common basis for OHS enforcement action and litigation. Failure to properly investigate violence and harassment complaints is a key issue in many of these cases. The *Rougoor* case is among the first to address how this duty applies when the person who complains no longer works for the company. Even so, it's crucial for employers to implement an effective workplace violence and harassment policy that provides for prompt, thorough, and fair investigation of employee complaints.