The Top 11 HR Compliance Cases of 2025 (So Far)

One of your most important responsibilities as an HR director is to monitor and keep your executives apprised of legal developments that may affect your company's operations. While it's the obvious focal point, new employment laws don't come around that often. But what does transpire almost every single day in every single part of the country are court, arbitration, and tribunal rulings involving real-life employment disputes such as those that have or are likely to arise in your own workplace. The problem is that following court cases is much more difficult and time-consuming than keeping up with new legislation and regulation. So, we make it a point to do the case tracking that most HR directors lack the time and resources to do and report back to you on the key rulings each month (in our Month In Review) and on a semi-annual basis. Here are what we believe have been the most important 11 HR cases of the first 6 months of 2025 and their practical impact on your own company and its HR program.

1. **Employer's Duty of 'Honest Performance' Doesn't Apply to Contract Negotiations, Says BC High Court**

Employers in BC dodged a major bullet with the province's top court ruling that the duty of honest performance in fulfilling employment contract duties doesn't extend to pre-contractual negotiations. The case began when a group of ex-employees brought a class action lawsuit against a Vancouver hotel for allegedly withholding crucial information about their healthcare coverage during the height of the COVID crisis to persuade them to give up their status as regular employees and accept casual employment instead. The lower court ruled that the employees had a valid claim for breach of the duty of honest performance and let the case go forward as a class action. But the BC Court of Appeal reversed, finding that the duty applies only to the performance of contractual duties, not how they're negotiated [*Ocean Pacific Hotels Ltd. v. Lee*, 2025 BCCA 57 (CanLII), February 28, 2025].

> **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. This case was an attempt to get the BC Court of Appeal to recognize a similar employer duty and liability risk during the negotiation of the employment contract using the duty of honest

performance rather than good faith. So, the fact that the employees failed is a big deal. However, in February 2024, the same Court greenlighted a different lawsuit contending that the employer duty to exercise good faith at termination also applied **during** employment [*British Columbia v. Taylor*, 2024 BCCA 44 (CanLII)]. Thus, employers need to keep a close eye on this Wallace damages liability extension threat in not only BC but all parts of the country.

2. **Courts Rule that Making Telecommuters Return to Office Is Constructive Dismissal**

The authority of employers to force telecommuters to return to work has become one of the hottest potatoes in current HR litigation. There were 2 major rulings addressing the issue in the first half of the year, both in the context of constructive dismissal. And in both cases, the telecommuter being forced back to the office won. The first case took place in Alberta involving the new owner of a vein clinic that implemented a "return to office" policy requiring an office manager who had worked mostly from home for decades to transition to full-time office work. The Alberta court found constructive dismissal, reasoning that this was a "work from home position" and that the manager was a loyal and faithful employee whose husband had just become seriously ill. This wasn't a "return" to office situation a la the months after the COVID pandemic but a fundamental change in the integral terms of the manager's employment, the court concluded [*Nickles v 628810 Alberta Ltd*., 2025 ABKB 212 (CanLII), April 4, 2025].

The second case came from BC where a newly promoted Marketing VP working from home left a construction firm because it didn't give her raise and demanded that she return to the office. The VP claimed she was constructively dismissed; the firm claimed she quit. While acknowledging that there was no written contract, the VP claimed there was an implied agreement allowing her to telecommute. The BC court agreed, noting that the Executive VP had told her that she didn't have to return to the office after the COVID pandemic because he knew she was getting the work done and he didn't care where she did it. He also approved of her setting up an office at home and buying her own equipment. "There is therefore little doubt that it was an ongoing term of employment that [the Marketing VP] could work from home, which [the Marketing VP] relied-upon and the company accepted," the court reasoned. Result: The firm had to pay her 19 months' notice for wrongful dismissal [*Parolin v Cressey Construction Corporation*, 2025 BCSC 741 (CanLII), April 23, 2025].

> **Takeaway & Impact on You:** Employees don't have a fundamental right to work from home. However, employees may **become** entitled to telecommute if their employer grants them such rights via contract. The moral of the *Nickles* and *Parolin* cases is that the contractual right to telecommute may arise either via express writing or oral promise and understanding. So, don't leave things to chance. Implement a written agreement and/or policy that spells out clear ground rules for telecommuting, including the right of the company to end the arrangement and require the employee to return to the physical workplace at any time and for any reason at your sole discretion.

4. **Courts Draw New Line on Employer's Duty to Investigate Harassment Complaints**

Employees can't sue companies for which they don't work for "negligent investigation" of their workplace grievances. That's the punch line of an important ruling from Saskatchewan's highest court upholding the dismissal of a money damages lawsuit by a SaskTel employee against the City of Saskatoon for failing to investigate the complaint she submitted to the City's Ombudsman about the company's CEO creating a toxic work environment. It'd be one thing if the employee actually worked for the City. But the City didn't have an employment or any other kind of legal relationship with her that would impose a duty of reasonable care to investigate her complaints of workplace harassment [*Hollinger v SaskTel Centre*, 2025 SKCA 40 (CanLII), April 11, 2025].

> **Takeaway & Impact on You:** This is the second recent case I've seen holding that the duty under OHS laws to investigate workplace violence and harassment complaints doesn't extend to complaining employees who no longer work for the company. In February 2024, the Ontario Human Rights Commission came to the same conclusion in a case called *Rougoor v. Goodlife Fitness Centres Inc.*, 2024 HRTO 312 (CanLII). Even so, it's crucial for employers to implement an effective workplace violence and harassment compliance game plan that procedure for prompt, thorough, and fair investigation of employee complaints.

5. **Ontario Arbitrator Wrestles with Legal Ramifications of Workplace Artificial Intelligence**

A fascinating case that most HR directors probably missed started in Ontario when a hospital services company decided to lay off all of the employees in a particular operation and rely on artificial intelligence (AI) to carry out their work. The company and union, CUPE, negotiated a settlement framework but disagreed on the appropriate comparator on which to base the wages due under the agreement. The company suggested "workplaces where this work is performed by technology and other similarly situated third-party contractors that provide call centre services for the purposes of patient transport in the healthcare industry;" CUPE argued that the comparator should be the CUPE central hospital agreement. After considering the functions of the affected employees, the arbitrator concluded that the CUPE agreement was the better comparator and relied on its more generous terms to determine the wages the company had to pay them [*Compass Group Canada Ltd. at Unity Health Toronto v CUPE*, Local 5441.04, 2025 CanLII 23755 (ON LA), March 21, 2025].

> **Takeaway & Impact on You:** Until HR and employment laws catch up with AI, courts and arbitrators will have to do their best to figure out how the old laws apply to the new technology. And so will HR directors. Go to the HR Insider website for analysis of how to guard against AI discrimination and liability risks and implement a legally sound workplace AI use policy.

6. **Workers' Comp Covers Psychological Damage from Overwork & Burnout**

A worker submitted a workers' comp claim for the depression and anxiety she allegedly developed from an excessive workload and stressful interpersonal incidents at work. As in most provinces, workers' comp in Saskatchewan covers psychological injury as long as a psychiatrist or psychologist provides a proper diagnosis and the worker is

exposed to a traumatic event at work. The worker in this case had a proper diagnosis; so, the key issue was whether she experienced traumatic events. The normal stress that employees experience in doing their jobs isn't considered trauma. However, the evidence showed that the worker's workload and work-related interpersonal incidents were "excessive and unusual in comparison to pressures and tensions experienced in normal employment." So, the WCB Appeal Tribunal ruled that the worker had a valid claim for psychological injury [*25-8995-37 (Re)*, 2025 SKWCBAT 337 (CanLII), March 12, 2025].

> **Takeaway & Impact on You:** This case has scary implications, especially in this time of tariffs and financial uncertainty. As companies reduce costs and staff, they'll be relying on employees to carry ever growing workloads exposing them to ever growing levels of fatigue and stress. There will be staggering bills to pay if the resulting burnout is deemed compensable under workers' comp. The best way to protect your company is to double down on efforts to safeguard employees against risks of fatigue, stress and burnout such as by implementing a workplace mental health policy .

7. **Loss of Income Not Required to Prove Discrimination When Victim Is Humiliated**

An important discrimination case began when a Canadian Border Services Agency reassigned a veteran Border Services Officer to a nonenforcement position based on medical testing suggesting that he wasn't physically fit to undergo the rigorous training required to exercise firearm duties. The Officer accused the Agency of disability discrimination and harassment, but the labour board rejected the grievance. Even if there was discrimination, there was no real harm since the Officer was allowed to keep working at the Agency at the same pay, the board reasoned. The Officer appealed and his persistence paid off when the federal court reversed the board's ruling as unreasonable. Exclusion on the basis of disability is illegal discrimination even if the victim doesn't suffer humiliation or loss of income, the court explained in awarding the Officer $3,500 in legal costs and damages for pain and suffering in an amount for the board to determine [*Matos v. Canada (Attorney General)*, 2025 FCA 109 (CanLII), June 2, 2025].

> **Takeaway & Impact on You:** The small amount of damages initially awarded belies the significance of this case in clarifying the ground rules of proving discrimination of any sort. The moral is that there's no such thing as harmless discrimination. More precisely, the humiliation, embarrassment and anguish, if any, that employees suffer as a result of discrimination is enough to prove entitlement to damages even if the discriminatory treatment causes them no real economic loss. That's why it's imperative to implement an effective non-discrimination policy at your workplace.

8. **36 Months Is Long Enough to Wait for Disabled Employee to Return**

How long is too long for an employer to hold open the job of an employee on disability leave? A Québec case shedding light on this important question involved a collective agreement allowing for termination of employees after 36 months of being on indefinite leave with a disability. In accordance with the clause, an employer

closed the file of a recreation technician who, after 3 years, was still on leave with 22 disabilities. The union objected but the arbitrator rejected the grievance, noting that courts in the province accept that 36 months is generally a reasonable accommodation as long as the employee has no reasonably foreseeable prospects of being capable of returning to work any time soon. And the medical evidence in this case demonstrated that the technician wouldn't be able to resume working within a reasonable time [*Alliance of Professional Health and Social Services Personnel (APTS) v. Integrated Health and Social Services Center Montérégie-Centre,* 2025 CanLII 714 (QC SAT), January 10, 2025].

> **Takeaway & Impact on You:** Human Rights Law, 101: Employers must make reasonable accommodations for an employee's disabilities up to the point of undue hardship. Of course, the big challenge is figuring out how long it takes for enduring a long absence to pass from reasonable accommodation to undue hardship. While there's no specific number that's universally recognized, courts in Québec have okayed drawing the line at 36 months as long as it's part of a collective agreement and there's no reasonable plausible prospects of a return. The second prong of that test applies in all jurisdictions; however, the unofficial 36-months' bright line does not.

9. Ankle Twist Isn't Significant Enough to Justify Post-Incident Drug Testing

As usual, drugs, alcohol and testing featured prominently in 2025 HR litigation. One of the more instructive cases featured a painter at a liquefied natural gas plant construction site who tripped and rolled his ankle. Although embarrassed by his own awkwardness, the painter reported the injury to a supervisor as required by the site's workplace injury reporting policy. But as the saying goes, no good deed goes unpunished. The painter's explanation of what happened didn't sit right with the supervisors who suspected that he might have been drunk or high. So, after investigating the incident, they demanded that the painter submit to post-incident drug and alcohol testing. The tests came back negative, but the union filed a grievance claiming that the company didn't have just cause to test. The BC arbitrator agreed. The incident wasn't significant to justify invading the painter's privacy and bodily integrity. Trips and twisted ankles happen at worksites all the time, it reasoned. And even if the incident had been significant, the investigation was "inadequate" because the investigators didn't interview witnesses or get the painter's side of the story. Result: The company had to pay $2,000 in damages [*Altrad Services Ltd. v International Union of Painters And Allied Trades, Local 138*, 2025 CanLII 31346 (BC LA), April 10, 2025].

> **Takeaway & Impact on You:** Creating a legally sound drug testing policy is just half the battle. You also need to ensure that you implement your policy in a way that's fair, consistent, and true to the agreed terms. This is especially true of policies that allow for testing on the basis of "reasonable cause" or after incidents.

10. Alberta Arbitrator OKs Use of Security Camera Footage to Prove Time

Theft

A union local fired a maintenance worker for time theft based on parking lot security camera footage showing him repeatedly leaving work early without permission. The union grieved, claiming that using security camera footage for disciplinary purposes violated the worker's PIPA privacy rights. While acknowledging that the worker knew about the camera because of the clearly posted warning signs in the parking lot, the union argued that his consent to be filmed was limited to security purposes. That's what the warning signs stated and the local had no written policy governing its use of the footage. But the Alberta arbitrator noted that under PIPA, employers don't need consent to use employees' protected information for an "investigation." Although management first discovered the worker's early exit inadvertently while reviewing the footage for an unrelated matter, it was "reasonable" to continue the inquiry to determine if this was an isolated incident or part of a larger pattern, the arbitrator reasoned. Result: It could use the footage as evidence of just cause to terminate [*CUPE, Local 37 v Unifor Local 191*, 2025 CanLII 49878 (AB GAA), May 22, 2025].

> **Takeaway & Impact on You:** Although it ultimately won the case, the employer in this case might have prevented the dispute altogether by implementing a video surveillance policy that explained its use of the parking lot security cameras and the safeguards in place to protect employees' privacy. Moreover, the union would have won had the case taken place in Ontario where the *Employment Standards Act* requires employers to implement a written electronic monitoring policy describing their use of surveillance technology in the workplace.

11. Failure to "Mitigate" Costs Wrongfully Dismissed Exec Over $750,000 in Damages

An electrical engineer and founder of Iders, a company acquired by GE, signed a new employment contract with GE promising him a $300,000 retention bonus if he was still running Iders as a full-time GE employee in 5 years. Less than 2 years later, GE entered into negotiations to sell Iders to Wabtec. As part of the acquisition, Wabtec offered employment on the same terms to all Iders' staff, including the engineer who declined the offer and decided to stay with GE to ensure his retention bonus. But GE let him go after the Wabtec deal closed. So, the engineer sued GE for nearly $900,000 in damages. While ruling that GE committed constructive dismissal, the court also found that the engineer's rejection of the Wabtec offer was a failure to mitigate damages and awarded him only $133,000. The engineer appealed but the Manitoba Court of Appeal held that it wasn't an error for the lower court to conclude that rejecting an offer of comparable employment from a successor employer was an unreasonable failure to mitigate. Unlike other cases involving similar situations that went in the employee's favour, accepting employment from Wabtec wouldn't have subjected the engineer to "hostility, embarrassment, or humiliation" [*Brown v General Electric Canada*, 2025 MBCA 37 (CanLII), April 25, 2025].

Takeaway & Impact on You: While defeating a wrongful dismissal allegation is always the employer's first choice, there may be tens and even hundreds of thousands still on the line even after liability is established and the question turns to damages. The *Brown* case is a dramatic illustration of the potency of the so-called "mitigation of damages" defence in reducing an employee's damages award. Find out about the 7

things employees must do to “mitigate” their damages after they’re wrongfully dismissed.

Disagree With Our Choices?

Drop me a line at glennd@bongarde.com and let me know what you think have been the biggest HR cases of 2025