The Top 12 HR Compliance Cases of 2026—So Far



Although they include several high court rulings, including one from the Canadian Supreme Court, we chose these cases not just for their authority but also because of the particular issues they address. Our intent is to make you aware of the key subjects driving HR law and litigation in 2026, including newly emerging issues like the use of artificial intelligence (AI) to carry out employment functions, the legal ramifications of bringing telecommuters back to the office, and employer duties to protect employees against domestic violence, as well as key rulings in cases involving perennial issues like termination notice, constructive dismissal, workplace harassment, and drug use.

1. Supreme Court Opens Door to Intimate Partner Violence Money Damages Lawsuits

Arguably, this year's most important HR court case didn't involve an employment law or happen in a workplace. It was a lawsuit for money damages brought by a woman against her ex-husband for physical assault, humiliation, and infliction of emotional distress during the course of their 16-year marriage. In a 6-3 ruling, the Supreme Court of Canada recognized a new tort allowing victims of intimate partner violence to bring these kinds of cases in civil court [*Ahluwalia v. Ahluwalia*, 2026 SCC 16 (CanLII), May 15, 2026].

Takeaway & Impact on You: Intimate partner, aka sexual and domestic violence, becomes a compliance issue when it happens in the victim's workplace. Previously, victims of these incidents had limited legal recourse. That's because the occupational health and safety (OHS) laws are enforced by the government via prosecution or imposition of administrative monetary penalties rather than by individual victims in private lawsuits. *Ahluwalia* opens a new door allowing victims to sue for money damages. Limits apply: In addition to having to prove abusive conduct, the victim is allowed to sue only the person that abused them. Consequently, the new tort probably won't pose a significant liability threat to employers. But that's not the point. The broader significance of *Ahluwalia* is in echoing parallel trends shaping OHS laws of extending legal protections of domestic violence including in the workplace. **Bottom Line:** Simply having a workplace violence prevention plan is no longer enough. You also need to incorporate protections against workplace domestic violence into the prevention plan. Find out how to protect your employees from the risk of workplace domestic violence.

2. Demotion that Puts Employee in ‘Intolerable’ Position Is Constructive Dismissal, Says Alberta High Court

A government agency supervisor sent an email to Department staff announcing that a 23-year employee was being transferred from Director of Financial Planning to Director of Compliance. But the employee didn’t accept the transfer because he believed it didn’t suit his skills and decided to leave the organization. The court found the agency liable for constructive dismissal and 17 months’ notice. Both sides appealed to the Alberta Court of Appeal, which upheld the ruling as reasonable. Given the current work environment, accepting re-employment with the same agency would’ve been “intolerable,” the top court agreed. However, it also agreed with the lower court’s decision to subtract six months from the award due to the employee’s lack of reasonable effort to find a position that would have been comparable to the one from which he was constructively dismissed [*Gugulyn v Alberta*, 2026 ABCA 68 (CanLII), March 10, 2026].

Takeaway & Impact On You. While a perennial liability pitfall, constructive dismissal via reassignment and demotion is of particular concern in these financial times when so many companies are feeling the pressure to restructure. A key takeaway from *Gugulyn* is the need to communicate with (and hopefully get the agreement of) affected employees. Thus, the fact that a veteran finance director found out about his own transfer via a department-wide email was crucial to the finding that he was constructively dismissed. Find out about the 13 other common constructive dismissal liability pitfalls and what to do to manage each one.

3. Québec High Court Limits Wrongfully Dismissed Employee’s Duty to Mitigate Damages

Another important reassignment reverberations case began when Hydro-Québec reassigned a 59-year-old executive who had occupied a strategic role for 35 years to a purely operational role, albeit at the same salary and benefits. The executive rejected the position, and HQ treated his refusal as a resignation. While finding constructive dismissal, the court ruled that the executive’s refusal to accept the new position was a failure to mitigate damages. The case went all the way to Québec’s highest court, which upheld the finding of constructive dismissal but reversed on failure to mitigate, finding that the employer must strictly offer the new position as a formal notice of termination. Because HQ never offered the executive the new job as a working notice in lieu of termination, it couldn’t penalize him for refusing it. **Result:** The executive was entitled to 24 months’ notice, $836,365 [*Poulin c. Hydro-Québec*, 2026 QCCA 758 (CanLII), June 4, 2026].

Takeaway & Impact On You: Canadian courts are divided on whether a wrongfully terminated employee’s duty to “mitigate” damages includes accepting offered employment from the company that fired them. Recent cases have answered that question “yes,” provided that the offered replacement job is at the same pay and benefits. *Poulin*, however, goes in the other direction, with the high court finding that accepting the new job would have been too humiliating and demeaning for the veteran executive even though he would have incurred no loss in pay or benefits. Find out about the seven things wrongfully dismissed employees must do to mitigate their damages.

4. Ontario Top Court Affirms that Post-Employment

Earnings Count Against Termination Notice Even If Job Pays Less

Another provincial high court pronouncement on the duty to mitigate involved a sales rep who was awarded 17 months' notice for wrongful dismissal. Although the sales rep admitted to not seeking a sales job that paid as well as the one he lost, the court rejected the company's failure to mitigate defence due to the lack of evidence showing that such jobs were actually available. The court also refused to deduct the $32,000 the rep did make from the new job because he earned it in "a lower-paying or ranking position." The Ontario Court of Appeal upheld the first part of the ruling but not the second [*Williamson v. Brandt Tractor Inc*., 2026 ONCA 272 (CanLII), April 16, 2026].

Takeaway & Impact On You: There's no rule saying that earnings from an inferior position aren't deductible in mitigation, the Ontario high court explained. **Result:** That money did count against the rep's 17 months' termination notice. Find out how to implement a legally sound termination notice compliance game plan at your company so that you and your payroll department are prepared to deal with issues like these.

5. Wrongful Conclusion that Employee Resigned Costs Saskatchewan Company $350,000

Saskatchewan's top court upheld a lower court ruling that a senior services manager was wrongfully dismissed and didn't resign or abandon his employment. The break came during the pandemic after a series of heated meetings with management about the company's cost overruns. "I'm done," proclaimed the manager walking out of the office never to return. The company didn't produce the evidence necessary to prove that this was just a heated moment during a stressful situation and that the manager demonstrated a "clear and unequivocal" intent to resign, the high court reasoned. There was also evidence that the manager withdrew his resignation, if that's what it amounted to, and that the company didn't initially accept it in any event. **Result:** The $348,000 damages award against the company stood [*Korpan Tractor and Parts (Parriwi Management Inc.) v Denton*, 2026 SKCA 44 (CanLII), March 27, 2026].

Takeaway & Impact On You: The moral of *Korpan Tractor* is that an employee's intent to resign must be clear and unambiguous. Simply assuming that an employee who stops working for you has resigned or quit can lead to liability for wrongful dismissal. And that can cost your company a boat load of money. Find out more about the law of resignation and how to avoid liability when terminating employees who haven't really quit.

6. Making Marketing VP Return to Office Is Constructive Dismissal

Authority of employers to make telecommuters return to work remains one of the hottest issues in HR litigation. A key case involved a Marketing VP who accused her firm of committing constructive dismissal by insisting that she return to the office after letting her work from home for more than three years. The arrangement began when the VP finished maternity leave and continued through the COVID pandemic. While not expressed in the written contract, the VP claimed there was an implied agreement between herself and the Executive VP. The BC court agreed and awarded her 19 months' notice, noting that the Executive VP had told her that she didn't have to return to the office because he knew she was getting the work done and didn't care where she did it. The BC Court of Appeal found the ruling legally sound and rejected the

employer's appeal [*Cressey Construction Corporation v. Parolin,* 2026 BCCA 199 (CanLII), May 11, 2026].

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 *Parolin* 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.

7. Ending Telecommuting Arrangement Violates Disabled Employee's Reasonable Accommodation Rights

Another instructive 2026 return-to-office case featured a union's claim that a company violated its duty to make reasonable accommodations by ending the hybrid work arrangement of an analyst who had been diagnosed with chronic sleep disorders, anxieties, depression, and other severe disabilities. The company claimed that the analyst was fit to return to the office and that allowing him to continue working from home at least four days a week was an undue hardship, especially since he had flexible start and end hours. The Ontario arbitrator sided with the union based on the treating doctor's testimony that working in the office full time, while not completely beyond the analyst's capabilities, would undermine the reliability of his work, at least until his current symptoms eased, which was more likely to happen if he be allowed to work from home a little longer. However, while hybrid work was a reasonable accommodation, the arbitrator reasoned that letting the analyst choose which day he came to the office was undue hardship and that management was entitled to make that decision so it could reasonably predict his work hours [*Ontario Power Generation v Power Workers' Union*, 2026 CanLII 27365 (ON LA), March 24, 2026].

Takeaway & Impact On You: This case made our Top 12 because it illustrates that in addition to constructive dismissal, insisting that a telecommuter return to the office may expose companies to risk of liability for discrimination. Find out more about how to recognize and manage the human rights liability risks of enforcing return to work policies.

8. Employer Workplace Harassment Duties Don't Apply to Severance Negotiations

Not surprisingly, workplace harassment has figured prominently in early 2026 HR litigation. A significant case began when severance negotiations with a terminated employee turned nasty and personal with insults and death threats exchanged. The finale was a text from the company that included the line "You suck d*** for a living now, Enjoy." Combined with the non-payment of severance, the employee accused the company of sex harassment. The Alberta Human Rights Tribunal dismissed the claim without a trial. We have no jurisdiction over whether the employee was wrongfully dismissed and entitled to severance, the Tribunal reasoned. And while the company's texts crossed the line for what's acceptable in an employment relationship, they occurred two months after the employment had already ended [*Werhun v IG Enterprise Ltd*., 2026 AHRC 29 (CanLII), March 5, 2026].

Takeaway & Impact On You: The employer's behaviour in *Werhun* was completely unacceptable. But because it happened in the course of severance negotiations rather than while the employee was still on the payroll, it wasn't deemed illegal workplace

harassment. Even so, HR directors should recognize that dealing with ex-employees can get nasty and implement a legally sound and effective Workplace Harassment Prevention and Compliance Game Plan that extends to severance and other post-employment interactions with ex-employees.

9. Lack of Privacy Controls Undermines Bus Company's AI-Based Drivers' Safety System

A cautionary tale about the dangers of relying on digital technology to resolve OHS and HR challenges began when a bus company installed an artificial intelligence (AI) remote surveillance system in all vehicles, using cameras mounted on windshields to capture both the interior, including the driver's workstation, and front of the vehicle. The federal arbitrator ruled that the newly installed AI-based Samsara system gathered much more extensive personal data than the conventional video cameras the company had previously used and that the resulting harms to drivers' Charter privacy rights outweighed the relatively minor improvements to safety. Moreover, the AI system's remote real-time viewing and other features allowed the company to use the system to gather and access data for purposes other than safety. Result: The company had to stop using the system within 90 days and pay $100 in privacy damages to each affected driver. The company appealed but the court upheld the ruling [*Coach Canada Workers' Union (CSN) v. NewCAN Coach Company ULC (Coach Canada*), 2026 CanLII 27321 (CA SA), March 5, 2026].

Takeaway & Impact on You: Many AI-based employee monitoring systems rely on personal monitors, scanners, and other technologies that gather and analyze extensive personal data to measure how people carry out their job duties. While this output may yield significant safety and performance improvements, it may also raise concerns under privacy laws. Use the HR Insider template to create an effective AI Use Policy at your workplace to address these and other legal issues.

10. Data Analytics-Driven Restructuring Demotion Is Not Based on Race, Says Federal Court

Another potential legal glitch embedded in AI solutions is algorithmic bias. In early 2017, a bank implemented IRIS, a national restructuring initiative designed to cut costs and enhance profitability by eliminating customer-facing positions made redundant by internet banking. Among the IRIS casualties was a Black man of African Caribbean descent who claimed he was demoted from his customer manager position because of his race. The Canadian Human Rights Tribunal dismissed the complaint, based on witness testimony that IRIS uses objective data analytics criteria not based on race or other protected characteristics. The federal court ruled that the Tribunal's determination that race didn't factor into the decision to demote was reasonable and rejected the appeal [*Miller v. Toronto Dominion Bank,* 2026 FC 150 (CanLII), February 2, 2026].

Takeaway & Impact On You: Although the employer won, relying on AI and data-driven analytics to make employment decisions can result in inadvertent and unforeseen discrimination to the extent bias is wired into the system. Use the HR Insider AI Bias Audit Template to uncover and rectify potential discrimination risks in your current AI applications.

11. OK to Ban Safety-Sensitive Workers from Using

Legalized Drugs at Work

An important federal case sheds light on where courts draw the lines between individual privacy rights and employers' rights to keep workers sobered. It began right after Canada legalized cannabis in 2018, when an airline adopted a new safety policy banning flight attendants, flight directors, and other high-risk employees from consuming any drug, whether legal or illegal, at work. The union claimed the policy was unreasonable and that affected employees' privacy rights outweighed the airline's safety concerns. But based on previous cases upholding similar bans and affirming the employer's overriding need to ensure that safety-sensitive employees are fit for duty, the federal arbitrator disagreed with the union and rejected the grievance [*CUPE, Local 4041 v. Air Transat*, 2026 CanLII 44306 (CA SA), May 6, 2026].

Takeaway & Impact on You: The key to *Air Transat* is that the airline's no-drug policy was based not on zero tolerance or principles of laws and morals, but on the universally accepted understanding that employees who perform safety-sensitive jobs must be fit for duty at all times. Thus, the fact that the drug consumed is legal or illegal has no impact on the analysis. Find out how to create a legally sound Substance Abuse & Fitness for Duty Policy at your workplace.

12. Employer's Duty to Accommodate Doesn't Apply to Ex-Employees

Uber permanently removed a driver from its platform due to problems with his registration and licensing information. After fixing the problem and getting the right licence, the driver sent Uber an "Apology Letter" and asked to be reactivated. Uber said no. The driver then sued Uber for disability discrimination. The Ontario Human Rights Commission dismissed the claim. Even if the driver did have a disability entitling him to reasonable accommodation, Uber's alleged violations all occurred after his account had already been deactivated for what the driver acknowledged were legitimate, nondiscriminatory reasons. It was only after the employment relationship ended when Uber's accommodation obligations ended that he told the company about his disability [*Ahammad v. Uber Canada Inc.*, 2026 HRTO 409 (CanLII), March 11, 2026].

Takeaway & Impact On You: The *Uber* case demonstrates how reasonable accommodation cases may turn not just on substantive laws but the actual accommodations process. Thus, the reason the driver lost is that he didn't notify Uber of his supposed disability until after he was kicked off the platform. Find out how to implement Accommodations Best Practices to avoid process breakdowns that can insulate your company against liability for failure to reasonably accommodate.

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Disagree With Our Choices?

Drop our editorial team a line at glennd@bongarde.com or haleyo@bongarde.com and let us know what you think have been the biggest HR cases of 2026.