

Top 5 HR Cases of September 2026



Here are the five most significant HR cases that came down in Canada last month.

1. Just Because One Termination Clause Is Invalid Doesn't Mean They All Are

What Happened: An employment contract included a clause allowing the company to temporarily lay an employee off if it faced financial difficulties. That's just what happened. The same contract also contained a termination notice limits clause of the contract that the court found in violation of the Ontario *Employment Standards Act* (ESA). So, the employee claimed the temporary layoff clause was also invalid. But the Ontario high court disagreed, finding that the clauses were distinct provisions and that a defect in one didn't necessarily poison the other. And unlike the termination notice limits clause, the temporary layoff clause did pass muster under the ESA and was thus enforceable [[Taylor v. Salytics Inc.](#), 2026 ONCA 621 (CanLII), September 3, 2026].

Significance: While termination notice limits will remain difficult to enforce, *Taylor* signals that courts—at least in Ontario—won't lump them together with other parts of the contract addressing termination. Although binding only in Ontario, the *Taylor* ruling might influence courts facing similar situations in other jurisdictions.

What To Do: Here are three things employers (especially but not just in Ontario) can do to take advantage of *Taylor* to shore up the enforceability of their own termination clauses:

- Recognize that [temporarily laying off an employee will likely constitute constructive dismissal](#) unless the contract specifically authorizes temporary layoff.
- Move temporary layoff clauses into a distinct section of the employment contract that's separate from the clause purporting to limit ESA termination notice rather than lumping them all together under a broad "Termination of Employment" section.
- Ensure that the distinct clause complies with all [requirements governing temporary layoffs under the employment standards laws of your jurisdiction](#) so that it'll stand up to separate scrutiny.

2. WestJet Shells Out \$4.5 Million to Settle Flight Attendants' Class Action

What Happened: A British Columbia court approved a \$4.5 million settlement of a workplace harassment class action lawsuit against WestJet by approximately 3,400 current and former flight attendants. In addition to being a class action, the case is noteworthy because the claims were based not on Occupational Health or Safety or tort law but breach of the airline's contractual duty to ensure flight attendants a harassment-free workplace. WestJet talked a good game about preventing harassment but didn't make the necessary efforts to deliver on those promises, the plaintiffs claim. As part of the settlement, WestJet will have to hire an independent third party to evaluate workplace harassment prevalence, underreporting, and the effectiveness of its current reporting channels [[Lewis v WestJet Airlines Ltd.](#), 2026 BCSC 1547 (CanLII), August 10, 2026].

Significance: Don't assume workers will tell you if they're being harassed, bullied, or threatened at work. Many victims are too afraid to come forward, especially if they don't think you'll take their complaint seriously.

What To Do: Take active measures to find out if harassment is taking place such as by [using pulse surveys to smoke out signs of a toxic workplace](#).

3. Wrongfully Dismissed CFO Is Entitled to Termination Notice, Says Alberta Court

What Happened: Told that her services were no longer needed, a CFO sued the construction consultation firm where she worked part-time for wrongful dismissal and \$100,000 in termination notice. The firm contended that the CFO was an independent contractor. After considering all of the evidence, the Alberta court concluded that the CFO was an employee: her contract was entitled an "employment agreement"; the firm controlled her activities and gave her authority to write cheques, a power it also assigned to its three individual principles; the CFO used only materials and personnel provided by the firm and had no direct financial stake or risk in the business; the firm paid her liability insurance premiums and other business expenses. At most, the CFO was a dependent contractor. So, the firm had to pay her termination notice [[Cooper v GFI Solutions Ltd.](#), 2026 ABCJ 142 (CanLII), September 9, 2026].

Significance: Classification as an employee or independent contractor is based not on a person's title or how the contract describes the position but on the specific circumstances of the particular arrangement.

What To Do: Don't make the same mistake the company in *Cooper* did! Apply [the 4 factors that CRA and the courts use to determine whether a worker is an employee or independent contractor](#).

4. Federal Court Upholds Constitutionality of \$20,000 Cap on Discrimination Damages

What Happened: The *Canadian Human Rights Act* allows individuals who suffer discrimination to sue for pain/suffering and willful/reckless special damages of up to \$20,000. A union representing 170,000 federal employees and legal clinic representing impoverished workers filed a lawsuit claiming that the damages cap violated Section 15(1) of the Charter guaranteeing the right of all individuals to "equal protection and equal benefit of the law without discrimination." The federal

court disagreed and dismissed the case [[Canada \(Public Service Alliance\) v. Canada](#), 2026 FCA 143 (CanLII), August 27, 2026].

Significance: While finding it to be constitutional, the court noted that \$20,000 cap was established in 1998 and was way out of whack with inflation. However, it concluded that it was powerless to address the issue since adjusting the cap was the responsibility of Parliament, not the courts.

What To Do: Even though the cap on special damages remains intact, the best liability management strategy is to avoid discrimination in the first place by implementing a legally sound [Non-Discrimination Policy](#) at your workplace.

5. No Grounds for Drug Testing Pipeline Workers, Affirms Saskatchewan High Court

What Happened: SaskEnergy ordered nine safety-sensitive union workers who were involved in two unrelated pipeline installation incidents to undergo drug and alcohol testing. The union claimed the company didn't have just cause to perform post-incident testing. The Saskatchewan arbitrator agreed and SaskEnergy appealed to the province's top court. The Court of Appeal sided with the union, finding that the arbitrator committed no obvious error in concluding that the incidents didn't qualify as a "significant work-related incident" or "high potential incident" triggering the SaskEnergy's right to test under the company's post-incident testing policy [[SaskEnergy Incorporated v Unifor Local 649](#), 2026 SKCA 94 (CanLII), August 26, 2026].

Significance: Workplace drug testing cases are often determined based not on what a testing policy says but how it's implemented. This is especially true of post-incident testing where the issue is whether the injury or incident is enough to justify testing under the policy.

What To Do: Find out [how to create a legally sound drug testing policy](#) at your workplace.