9 Things to Include in Your Child Death & Disappearance Leave Policy

As provinces make sweeping changes to ESA laws, employers face the challenge of revising their HR policies to keep up. While changes to wage, hours and other bread-and-butter rules will require little more than minor tweaking of current policies, other changes will require whole new policies. Exhibit A: the new employee rights to unpaid leave to deal with a child’s death and disappearance. Even if you already have a child leave policy in place, ESA changes are coming down so fast that you may have to revise it.

What’s At Stake
A century ago, missing work to deal with a family crisis was a ticket to the unemployment line. But as work-life balance emerged as an important social value, the laws were changed. Unpaid leave freed up employees to care for family members and deal with other personal emergencies without forfeiting their jobs. But one particularly harrowing crisis was overlooked: the crime-related disappearance or death of a child. In recent years, 11 of 14 jurisdictions have added (or are in the process of adding) such leave to their ESA laws. And expect the remaining three (BC, Northwest Territories and Nunavut) to do likewise in the not too distant future.

Bottom Line: Child disappearance/death leave is here to stay and your organization needs a policy for dealing with it.

9 Key Provisions to Include

1. Policy Statement
Acknowledge that letting employees take leave to deal with the death or disappearance of a child is not only a legal but a moral obligation consistent with the values of your organization [Policy, Sec. 1].

2. Eligibility Criteria
Indicate which employees are eligible for unpaid child death or disappearance leave. Under ESA laws, leave is allowed only if all 4 of the following conditions are met:

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i. The employee has worked for you for at least the minimum service time specified;
ii. The child is under 18;
iii. The employee is a “parent,” which includes biological, adopted, foster and common-law parents; and
iv. The death or disappearance is the “probable result” of a crime (unless the parent is charged with the crime)

[Policy, Secs. 2 and 3].

3. How Long Leave Can Last
Under most ESA laws, leave for a child’s crime-related disappearance can last up to 52 weeks; leave for a crime-related death can last 104 weeks. (Exception: In New Brunswick, 37 weeks is the maximum for both.) What starts as 52-week disappearance leave may evolve into 104-week death leave if, heaven forbid, the child is found dead. But make it clear that leave times are aggregate, not consecutive. In other words, the combined leave for the death or disappearance of the same child due to the same event can’t exceed 104 weeks [Policy, Sec. 4].

Exception: Ontario Bill 148
If and when the Ontario Fair Workplaces, Better Jobs Act, 2017, takes effect, employees in Ontario will be able to take both the current 104 weeks of leave and a separate leave of 104 weeks due to the same child’s crime-related death or disappearance.

4. When Leave Must Begin
Child death and disappearance leave is meant to be taken immediately, i.e., no later than the first week after the disappearance or death occurs [Policy, Sec. 4].

5. No Separate Installments
Say that employees must take leave all at once and can’t break it into separate installments [Policy, Sec. 4].

6. Notification Process
Require employees to provide written notification of leave as soon as possible, including the leave’s:
- Starting date;
- Expected length; and
- Reasons.

You’re also allowed to require employees to provide “reasonable documentation” verifying the child’s crime-related death or disappearance, provided that you make the request in writing [Policy, Sec. 5(b)].

7. Post-Leave Changes Affecting Return Date
Require employees to report any changes affecting their return date as soon as possible. Your policy should also address some basic scenarios that may take place after leave begins:

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Missing child found alive</td>
<td>Leave ends within 14 days after child found (or sooner if 52-week maximum would be exceeded)</td>
</tr>
<tr>
<td>Missing child found dead</td>
<td>Leave can run up to 104 weeks</td>
</tr>
<tr>
<td>It becomes clear that death or disappearance isn’t crime-related</td>
<td>Leave ends immediately</td>
</tr>
<tr>
<td>Parent is charged with crime related to the death or disappearance</td>
<td>Leave ends on date parent is charged</td>
</tr>
</tbody>
</table>

[Policy, Sec. 6].

8. Reinstatement Notification
As noted above, employees must list the expected return date when providing written notice of leave. But you should also require employees to provide new notice if they want to return early based on the ESA requirements of your jurisdiction [Policy, Sec. 8].

9. Reinstatement Rights
Employees returning from leave are legally entitled to be reinstated to their previous jobs or a comparable position in terms of pay and benefits. Your policy should also explain whether seniority, benefits and vacation accrue during leave based on what your ESA laws say [Policy, Sec. 9].
In recent years, most provinces have changed their employment standards laws to provide unpaid leave for employees who face the unenviable ordeal of dealing with the crime-related disappearance or death of a child. BC, Northwest Territories and Nunavut are the only jurisdictions not to adopt such leave. But while the rules are similar, there are also some subtle but important differences from jurisdiction to jurisdiction. Here’s a rundown.

**Crime-Related Child Disappearance and Death Leave Rules by Jurisdiction**

<table>
<thead>
<tr>
<th>Jurisdiction (1)</th>
<th>Leave (maximum weeks) (2)</th>
<th>Eligibility</th>
<th>Conditions (3)</th>
<th>Notice Required</th>
</tr>
</thead>
</table>
| Federal          | *52 if child disappears  
*104 if child dies | At least 6 consecutive months of continuous employment | Death or disappearance must be “probable result” of a crime | Employee must provide written notice and, if employer requests, documentation before leave or as soon as possible after it begins |
| Alberta          | *52 if child disappears  
*104 if child dies | At least 90 days employment with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide “reasonable verification” and written notice (including expected return date) as soon as is reasonable and practicable |
| Manitoba         | *52 if child disappears  
*104 if child dies | At least 30 days employment with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide written notice of at least one pay period (if circumstances allow) and “reasonable verification” as soon as possible |
| New Brunswick    | *37 if child disappears 
*57 if child | No minimum service requirement specified | Death or disappearance must be “probable result” of a crime | Employee must provide written notice as soon as possible as well as reasonable documentation if employer requests it |
| Newfoundland & Labrador | *52 if child disappears  
*104 if child dies | At least 30 days employment with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide written notice of at least 2 weeks (if circumstances allow) and “reasonable verification” as soon as possible |
| Nova Scotia      | *52 if child disappears (which must be taken within 53 weeks of disappearance)  
*104 if child dies (which must be taken within 105 weeks of death) | At least 3 months employment with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide written notice and plan stating leave dates as soon as possible as well as “reasonable evidence” if the employer requests it |
| Ontario (Current law—ESA Sec. 49.5) | *52 if child disappears (which must be taken within 53 weeks of disappearance)  
*104 if child dies (which must be taken within 105 weeks of death) | At least 6 consecutive months employment with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide written notice and plan stating leave dates as soon as possible as well as “reasonable evidence” if employer requests it |
| Ontario (Bill 148: Ontario Fair Workplaces, Better Jobs Act, 2017) | 104 if child disappears—which is in addition to the leave provided under ESA Sec. 49.5 | At least 6 consecutive months employment with same employer | Disappearance must be “probable result” of a crime | Employee must provide written notice and plan stating leave dates as soon as possible as well as “reasonable evidence” if employer requests it |
| Prince Edward Island | *52 if child disappears (which must be taken within 53 weeks of disappearance)  
*104 if child dies (which must be taken within 105 weeks of death) | At least 3 continuous months employment with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide written notice and “reasonable documentation” if employer requests it in writing |
| Québec           | *52 if child disappears  
*104 if child dies | At least 3 months employment with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide written notice as soon as possible |
| Saskatchewan     | *52 if child disappears (which must be taken in 52-week period that starts the week of disappearance)  
*104 if child dies (which must be taken in 104-week period that starts the week of death) | More than 13 consecutive weeks service with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide written notice and, if employer requests it, written evidence of verification, as soon as possible |
| Yukon            | *52 if child disappears (which begins of day of disappearance)  
*104 if child dies (which begins on day of death) | At least 6 months of continuous employment with same employer | Death or disappearance must be “probable result” of a crime | Employee must provide written notice of at least 2 weeks (if circumstances allow) and “reasonable verification” as soon as possible |

**Notes**

1. There is no specific leave for a child’s crime-related death or disappearance in BC, Northwest Territories and Nunavut.
2. Disappearance leave must be cut short if child is found (although it can also be extended from 52 to 104 weeks if he/she is found dead as the probable result of a crime); leave must also be cut short if the death or disappearance no longer appears to be crime-related.
3. Leave isn’t allowed if the parent is charged with committing the crime.
Dealing with drug addiction is a thorny legal issue for HR managers, especially at dangerous work sites like mines and construction projects. Addiction can create significant safety risks for not just the addicted employee but his/her co-workers. By the same token, drug addiction is also considered a disability under human rights laws. And this begs a crucial question that the Supreme Court of Canada has just addressed: Does a drug addict’s protection against employment discrimination constitute an excuse for violating workplace safety rules?

THE CASE

What Happened: An Alberta coal mine operator’s “no free accident” policy required employees to disclose whether they had any drug addictions or dependencies. Those who came forward would be offered treatment; but if they failed to disclose and later got into an accident and tested positive for drugs, they’d be terminated. A loader driver addicted to cocaine chose the latter option. Sure enough, he got into an accident, tested positive and got fired. He claimed disability discrimination but the Alberta Human Rights Tribunal threw out his case.

What the Court Decided: The Supreme Court of Canada said the Tribunal’s ruling was reasonable and refused to overturn it.

How the Court Justified the Decision: Although the majority agreed that firing the driver wasn’t discrimination, they did so for different reasons:

Theory 1: He Was Fired for Violating Policy, Not Being an Addict: The “no free accident” policy was a legitimate safety measure. The driver acknowledged that he knew about the policy but contended that the self-denial associated with his addiction made it impossible for him to come forward and disclose it. But the Court didn’t buy it. He knew that using drugs outside work was dangerous and was perfectly capable of following the policy. The reason he was fired was that he deliberately chose not to, not because he was an addict.

Theory 2: He Was Fired for Being an Addict but Legally So: Another group of Justices found that addiction was at least one factor in the driver’s termination. But while that was enough to taint the decision, it wasn’t enough to prove discrimination. The driver also had to show that the employer failed to accommodate him to the point of undue hardship. The reason he should lose the case was that he couldn’t clear that hurdle. Drug use in a coal mine could have disastrous consequences. The threat of serious and immediate termination was crucial to deter such use. Imposing a lesser penalty on the driver would have undermined the deterrent effect of the policy and imposed undue hardship on the employer, the Justices reasoned.

Stewart v. Elk Valley Coal Corp., 2017 SCC 30 (CanLII), June 15, 2017

TAKEAWAY

Stewart comes just two months after an Ontario court upheld the Toronto Transit Commission’s random drug and alcohol testing policy in the Amalgamated Transit Union, Local 113 case. Once again, the message seems to be that the employer’s interest in ensuring workplace safety trumps personal privacy and disability discrimination rights. Of course, it’s a lot more subtle than that. Thus, while the Stewart case continues the recent judicial momentum in favour of highly restrictive drug policies, we need to be careful not to overblow its significance for future cases. Some caveats to keep in mind:

- Like Amalgamated Transit, Stewart took place in a highly dangerous work setting for which unusually severe health and safety measures were easy to justify;
- The non-punitive treatment offered to voluntary disclosers made the harsh disciplinary provisions for non-disclosers much easier to justify as a safety measure to deter drug use;
- The crucial finding in Stewart that the driver’s addiction had no relation to his decision not to obey the “no free accident” policy is highly questionable (the concurring Justices did, in fact, question it) and doesn’t preclude other courts from finding that addiction did play a role in an employee’s violations in future cases.
Month in Review

A roundup of new legislation, regulations, government announcements, court cases and arbitration rulings

**FEDERAL**

**LAWS & ANNOUNCEMENTS**

**Human Rights**

June 19: Bill C-16, adding gender identity and gender expression to the list of human rights act grounds protected from employment discrimination received Royal assent and is now officially law. C-16 also protects the trans-gendered against hate crimes.

**Diversity**

Aug. 4: That’s the deadline to apply for a grant under the new federal Workplace Opportunities: Removing Barriers to Equity program designed to promote hiring of women, indigenous people and the disabled. The program is open to federally-regulated organizations in the private sector and requires submission of a project proposal for deploying minority hires.

**Labour Law**

June 17: Newly adopted Bill C-4 rolls back the tory government’s controversial labour reforms and restores the union certification rules as they were before June 2015:
- Removal of workers’ guarantee of anonymity in certification voting
- Secret ballot required only in limited circumstances
- Unions automatically certified upon providing Board evidence of support by 50% of workers +1
- Unions automatically decertified if workers show Board 50%+1 support for decertification (as opposed to 40% under current rules)
- Elimination of union financial disclosure to member obligations.

**Immigration**

June 19: Effective today, applicants don’t have to continue living in Canada once they’re granted Canadian citizenship. Dual citizens living in Canada convicted of crimes against the national interest will no longer automatically lose Canadian citizenship. This is just the first wave in a series of changes in citizenship rules taking effect under newly adopted Bill C-6.

**Pensions**

June 28: OSFI revised its Instruction Guide for completing the OSFI 49 Annual Information Return and OSFI 49A Schedule A—CRA Information Requirements. The good news is that most of the changes are minor and cosmetic.

**ALBERTA**

**LAWS & ANNOUNCEMENTS**

**Human Rights**

June: The Human Rights Commission updated its information sheet on grounds protected from discrimination to add definitions of “gender identity” and “gender expression.”

**Drugs & Alcohol**

July 31: That’s the deadline for Albertans to weigh in on how the province should manage cannabis once the fed’s legalize it by July 2018. Although legalization will be federally mandated, each province must adopt its own regulatory framework addressing workplace safety and other issues associated with legal cannabis.

**Pensions**

June 30: Last call to comment on a trio of draft pension-related Interpretive Guidelines from the Superintendent:
- IG-12 – Governance, Investment and Funding Policies and Plan Assessments
- Further Extension for Completion of Governance Policy
- Extension for Completion of Governance Policy and Extension for Completion of Initial and Triennial (3-year) Plan Assessments.

**CASES**

**Is $15K Too High a Penalty for Sexually Harassing a Waitress?**

The restaurant owners said it was and cited about a half dozen other cases where sexually harassed waitresses got between $1.5K and $5K in damages. But the Human Rights Commission upheld the $15K award. This case was more serious. It involved 3 instances of unwelcome touching, including a pair of buttocks-gropes, over a 4-month period. Adding insult to injury, sex harassment was also a factor in the waitress’s termination [Mandziak v Taste of Tuscany Ltd., 2017 AHRC 10 (CanLII), May 17, 2017].

**BRITISH COLUMBIA**

**LAWS & ANNOUNCEMENTS**

**Minimum Wage**

Sept. 15: The BC general minimum wage is going up 50¢ to $11.35 on that date. An identical increase will send the minimum wage for liquor servers to $10.10 per hour.

**Pensions**

June 16: Responding to reported irregularities, the Superintendent issued a new bulletin (PENS 17-002) setting out its expectations on how plans should list termination expenses in their actuarial reports. The solvency valuation should provide for expenses that may reasonably be expected to be paid by the pension fund under the termination scenario between the valuation date and wind-up of the plan, i.e., date when all plan benefits are settled and assets are distributed, according to the Bulletin.

**Workers’ Compensation**

Sept. 15: That’s the deadline to comment on a new WorkSafeBC proposal to stop using the projected total cost of permanent disability awards to calculate employers’ experience rating (ER). Instead, of capitalized value, award amounts would be included as they’re paid out to workers over time.
**CASES**

**High Court: No Negligence Suits against WorkSafeBC for Workers’ Comp Denials**
A helicopter factory technician collected workers’ comp after hurting his back at work. But WorkSafeBC (the Board) cut off his benefits after finding his degenerative disc to be a preexisting condition that the work incident didn’t aggravate. Having exhausted his appeals options, the technician sued the Board for negligently mishandling his claim. But while the strategy was creative, it was also a legal non-starter. The Board has exclusive jurisdiction to determine if injuries are work-related under workers’ comp and are immune from civil lawsuits for money damages, ruled the BC Court of Appeal [Gill v. WorkSafeBC, 2017 BCCA 239 (CanLII), June 15, 2017].

**Collective Bargaining**
June 22: The New Brunswick Medical Society officially ratified a new 4-year physician services master agreement with the province. Highlights:
- Covers both salaried and fee for service physicians
- Annual 1% salary increases, starting retroactive to April 1, 2016
- Review of existing fee codes affected by recent technological changes
- Creation of Family Medicine New Brunswick agency to recruit primary care physicians to the province.

**Workplace Safety**
June 1: WorkSafeNB ran up a $114.8 million operating deficit in 2016 thanks to higher than expected claim costs. Key safety from the newly published 2016 Annual Report:
- Fatalities: 18
- Accident frequency (per 100 FTE): 3.06 (vs. 3.05 in 2015)
- Lost-time workplace injury rate: 1.15 (same as 2015)
- Employers with at least one day lost-time claims: 5,698
- Employers with no lost-time claims: 4,769.

**LAWS & ANNOUNCEMENTS**

**Pharmacare**
June 26: In a move designed to help Manitobans recover from opioid addictions, Pharmacare has removed coverage criteria for suboxone, a drug often used as an opioid replacement option.

**Collective Bargaining**
May 25: Highlights of the newly ratified 3-year collective agreement between Aramark Restaurants and UFCW Local 832:
- Annual 2.5% wage increases, starting retroactively from Oct. 1, 2016
- Increased footwear allowance and dental benefits
- Higher employer pension contributions.

**Workplace Safety**
June 19: Highlights of Manitoba WCB’s newly published 2016 Annual Report:

<table>
<thead>
<tr>
<th>Metric</th>
<th>2016 Result</th>
<th>2016 Target</th>
<th>2015 Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lost time injury rate (per 100 workers)</td>
<td>2.9</td>
<td>2.9</td>
<td>3.0</td>
</tr>
<tr>
<td>Days lost to injury rate (per 100)</td>
<td>1.67</td>
<td>1.67</td>
<td>1.68</td>
</tr>
<tr>
<td>Total work injuries</td>
<td>28,960</td>
<td>28,100</td>
<td>28,969</td>
</tr>
<tr>
<td>Total time loss injury claims</td>
<td>14,167</td>
<td>--</td>
<td>14,442</td>
</tr>
<tr>
<td>Severe injuries</td>
<td>2,548</td>
<td>2,450</td>
<td>2,524</td>
</tr>
</tbody>
</table>

**NEW BRUNSWICK**

**Pay Equity**
June 27: New Brunswick has agreed to make $8.4 million in equity adjustment payments over the next 10 years to compensate government union employees who weren’t paid value commensurate with their work. The money will go to 3 groups heavily represented by women including professional support workers in schools, specialized health care professionals and medical professionals.

**Drugs & Alcohol**
July 31: That’s the last day to weigh in how you think cannabis legalization should be implemented in New Brunswick, including with regard to employment and workplace safety issues.

**NORTHWEST TERRITORIES**

**Apprentices**
May 31: The GNWT outlined a new strategy to promote growth of the apprentice and skilled trades sectors via education, targeted business incentives and collaboration with private industry.
**NOVA SCOTIA**

**LAWS & ANNOUNCEMENTS**

**Workplace Safety**
June 12: New OHS laws (erstwhile Bill 165) took effect clarifying which work injuries and illnesses must be reported and giving government safety inspectors broad new powers to crack down on repeat offenders including authority to:
- Issue stop-work orders at all sites of a repeat offender
- Seek a court order barring repeat offenders from working in an industry
- Require repeat offenders to provide notification of their future work locations and activities.

**Workers’ Compensation**

June 15: An all-time low time-loss injury rate of 1.74 and a robust solvency ratio of 84.1% are the headliners of the WCB’s newly published 2016 Annual Report.

<table>
<thead>
<tr>
<th>Metric</th>
<th>2016</th>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time-loss claims</td>
<td>5,847</td>
<td>6,014</td>
<td>5,953</td>
</tr>
<tr>
<td>Lost time injury rate (per 100 workers)</td>
<td>1.74</td>
<td>1.84</td>
<td>1.82</td>
</tr>
<tr>
<td>Total claims</td>
<td>24,311</td>
<td>23,933</td>
<td>24,505</td>
</tr>
<tr>
<td>Acute workplace fatalities</td>
<td>2</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>Chronic fatalities</td>
<td>18</td>
<td>19</td>
<td>14</td>
</tr>
<tr>
<td>Leading cause of injury</td>
<td>Sprains/strains: 63.5%</td>
<td>Sprains/strains: 64%</td>
<td>Sprains/strains --</td>
</tr>
<tr>
<td>Solvency ratio</td>
<td>84.1%</td>
<td>80.4%</td>
<td>76.99%</td>
</tr>
</tbody>
</table>

**Labour Laws**
June 1: Although the ESA proposals are getting most of the attention, Bill 148 also includes significant changes to labour laws:
- Allow card-based union certification for building services, home care and community services and temp agencies
- Unions’ right to access complete list of an organization’s employees and contact info upon demonstrating support of 20% of workforce
- Certification votes could be held outside workplace or electronically
- OLRB right to consolidate separate bargaining units into one
- Elimination of 6-month limit on when employees can return to work after starting a legal strike
- Increase maximum fines to $5K for individuals and $100K for organizations.

**Human Rights**
June 19: The Ontario Human Rights Commission issued a new policy statement explaining the interplay between the Human Rights Code and French-language minority rights. Punchline: Even though language isn’t a protected ground under the Code, treating people differently because they’re Francophones is discriminatory if it’s based on prejudices or stereotypes. But such treatment is okay if it’s not tied to nationality, race, creed or other Code ground, e.g., where proficiency in a language other than French is a legitimate requirement for job performance.

**Trades**
July 30: That’s the deadline to comment on an MOL proposal to revise the trade classification panels criteria under the Ontario College of Trades and Apprenticeship Act, 2009. Under changes that took effect last December, classifications reviews will be carried out by a newly created agency called the College of Trades Appointments Council and Classification Roster.

**Pensions**
May: FSCO reported strong DB pension numbers for the quarter ended March 31, 2017. The median solvency ratio was 93%, vs. 91% as of Dec. 31, 2016. 63% of plans had a solvency ratio between 85% and 100%, and 22% had ratios above 100%.

**Workplace Safety**
Oct. 1: That’s the new deadline to provide fall protection training to workers working at heights on a “construction project.”

**Workers’ Compensation**
July 7: That’s the deadline to comment on the WSIB’s proposed coverage rules for work-related chronic mental stress. The operable word is “chronic,” which means that workers will be covered not just for traumatic stress but “mental stress caused by a substantial work-related stressor, including bullying or harassment.” Decisions or actions affecting the worker’s job duties, work conditions and/or discipline would not be deemed due to work-related chronic stress, according to the WSIB.

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**NUNAVUT**

**LAWS & ANNOUNCEMENTS**

**Workers’ Compensation**
June 14: WSCC issued a warning to seasonal morel mushroom workers: If you want workers’ comp coverage, you won’t get it through your employer; instead, you need to buy Personal Optional Coverage from the WSCC.

**ONTARIO**

**LAWS & ANNOUNCEMENTS**

**Minimum Wage**
June 1: Newly proposed Bill 148 (Fair Workplaces, Better Jobs Act, 2017) would raise Ontario’s minimum wage to $15 per hour, effective Jan. 1, 2019. Meanwhile, the following minimum wage hikes will take effect this October:

<table>
<thead>
<tr>
<th>Minimum Wage</th>
<th>Current Hourly Rate</th>
<th>Rate as of Oct. 1, 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>$11.40</td>
<td>$11.60</td>
</tr>
<tr>
<td>Student</td>
<td>$10.70</td>
<td>$10.90</td>
</tr>
<tr>
<td>Liquor Servers</td>
<td>$9.90</td>
<td>$10.10</td>
</tr>
</tbody>
</table>

**Labour Laws**
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<tr>
<th>Metric</th>
<th>2016</th>
<th>2015</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hunting &amp; Fishing Guides</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$56.95 for less than 5 consecutive hours in a day</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$113.95 for 5 or more hours in a day (whether or not hours are consecutive)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Homeworkers</td>
<td>$12.55</td>
<td></td>
<td>$12.80</td>
</tr>
</tbody>
</table>
CASES

Employee Socked with Legal Bill after Losing Constructive Dismissal Case

Two days after her longtime friend and mentor resigned, a telecom employee did likewise. She then sued the company for constructive dismissal claiming she was forced out by longer hours and a poison work environment. She also asserted emotional distress and other claims. But the court didn’t buy any of it. The real reason she left was because she was unhappy with management and the company’s direction, it found. Finding no cause to second-guess the lower court, the Court of Appeal upheld the ruling but ordered the employee to pay $15K to cover the company’s legal costs [Persaud v. Telus Corporation, 2017 ONCA 479 (CanLII), June 9, 2017].

PRINCE EDWARD ISLAND

LAWS & ANNOUNCEMENTS

Privacy

July 1: A new medical privacy law called the Health Information Act takes effect. In addition to limiting collection, use and disclosure of an individual’s protected health information, the law gives patients the right to access their own health records.

Workplace Safety

June 26: The WCB 2016 Annual Report is out. Key takeaway: A modest dip in time-loss injury rates failed to offset sharp rises in claims numbers. Of course, the relatively small numbers add a relative degree of volatility to trends and year-to-year to differences in PEL.

Metric | 2016 | 2015
--- | --- | ---
Time-loss claims | 942 | 866
Total claims adjudicated | 1,884 | 1,776
Lost time injury rate (per 100 workers) | 1.77 | 1.79

QUÉBEC

LAWS & ANNOUNCEMENTS

Young Workers

June 1: With the arrival of summer, CNEST is calling on employers to pay special attention to keeping young workers safe. Every day, 28 workers under age 24 suffer work accidents, notes the CNEST bulletin.

Pensions

Dec. 31: That’s the deadline to provide employees access to a voluntary retirement savings plan if you had at least:
- 5 eligible employees on Dec. 31, 2016; and
- 10 or more eligible employees on June 30, 2017.

SASKATCHEWAN

LAWS & ANNOUNCEMENTS

Minimum Wage

June 26: A 24¢ increase will send the Saskatchewan minimum wage to $10.96 per hour on October 1, the government announced.

Pensions

June 30: That’s the deadline to comment on a Financial and Consumer Affairs Authority proposal to increase registration and filing fees for pension plans.

OHS Scorecard

June: Saskatchewan OHS fines issued this month (listed by recency):

<table>
<thead>
<tr>
<th>Fine</th>
<th>Offender</th>
<th>Offence(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$60,000</td>
<td>Meridian Development Corp.</td>
<td>Failure to ensure competent supervision after worker suffers severe leg injury when glass panel falls on top of him</td>
</tr>
<tr>
<td>$10,500</td>
<td>Worker named Justin Cox</td>
<td>Worker’s failure to lock out machine exposes 2 co-workers to arc flash causing second degree burns to their hands, arms and faces</td>
</tr>
<tr>
<td>$5,250</td>
<td>Dalton Parisian</td>
<td>No fall protection for workers 3 metres or more high after roofer suffers serious head injuries in fall to concrete driveway</td>
</tr>
<tr>
<td>$1,400</td>
<td>Aesthetic Developments Inc.</td>
<td>OHS inspector spots workers not wearing proper fall protection on roof of two-storey home</td>
</tr>
</tbody>
</table>

Workers’ Compensation

June 30: That’s the deadline to comment on proposed changes designed to modernize the Workers’ Compensation Board structure and speed up the processing and appeal of benefits decisions.

CASES

No Causal Connection between Employee’s Safety Concerns & His Firing

An equipment operator was fired 2 months into his probationary employment. He claimed that the firing was in retaliation for his complaining about waste disposal bins being too close to overhead electrical wires. Protection against retaliation applies to probationary employees, the arbitrator acknowledged. But the evidence showed that while the operator complained to co-workers, he didn’t express his safety concerns to management until after he was terminated. So the firing wasn’t retaliatory. The Board found the arbitrator’s ruling reasonable and refused to overturn it [Lund v West Yellowhead Waste Resource Authority Inc., 2017 CanLII 30151 (SK LRB), May 8, 2017].

YUKON TERRITORY

LAWS & ANNOUNCEMENTS

Human Rights

June 14: Add Yukon to the list of jurisdictions to officially make gender identity and gender expression grounds protected from discrimination under human rights laws. The newly passed legislation also changes the Vital Statistics Act by removing the requirement that individuals have sex change surgery to change the gender listed on their birth certificate.

For more of these jurisdictions’ laws & announcements and cases, please visit www.hrinsider.ca.
THE 21ST CENTURY WORKPLACE

Why Obeying Human Rights Laws Isn’t Enough to Achieve Diversity

HR people spend a lot of time talking about “diversity” and “discrimination” (or “non-discrimination”). While both are crucial values, they’re not the same thing. And if you use the terms interchangeably, chances are that you’re not doing enough to help your organization achieve both goals.

What Diversity Is All About
Organizations are a collection of individuals whose unique characteristics and experiences shape the way they perceive the world, process information and make decisions. Within the HR context, the term “diversity” refers not just to the existence of personal differences but the value of harnessing them as a source of organizational strength.

The Diversity Continuum
Diversity as a value is actually a continuum of positive attitudes toward personal differences:
- Tolerance in which people must be restrained from letting personal differences to become a source of discord, conflict and discrimination;
- Acceptance in which decency, respect and fairness for all comes more naturally; and
- Inclusion in which personal differences are embraced and leveraged to improve business performance.

The Discrimination Laws
Of course, diversity isn’t just an ethical but a legal obligation. Human rights laws ban discrimination and require employers to equal opportunity regardless of race, sex, religion, disability and other personal characteristics protected by the law.

While imperative, obeying human rights laws gets you only to the tolerance range of the diversity continuum. The law doesn’t force you to like or even accept personal differences as long as the ground rules you use for deciding who to hire, promote and other employment decisions are reasonable, based on merit and fairly applied. Moreover, protection from discrimination is limited to a handful of personal characteristics, including age, race, religion, nationality, sex, disability, family status, sexual preference, gender identity, income source, political belief, criminal background, etc.

The Quest for Inclusion
To achieve diversity, organizations must go beyond simple compliance and strive for the farther ranges of the continuum. Acceptance and inclusion are based not simply on policies and procedures but attitudes toward differences as well as recognition of how those differences can be leveraged as a competitive advantage empowering to:
- Attract and retain the best people;
- Maximize productivity;

Moving from non-discrimination to inclusion

- Provide better services and products to r customers;
- Better serve the community; and
- Enhance the organization’s reputation.

In addition, inclusion encompasses not just the personal characteristics protected by human rights but any personal differences that may affect how individuals perceive and are perceived by the world, including differences in:
- Educational background;
- Work roles;
- Style of communication;
- Job skills;
- Organizational levels;
- Personal interests outside of work;
- Values; and
- Social styles.
# HR Compliance Calendar

## Upcoming Deadlines, Regulatory Changes and Enforcement Events

<table>
<thead>
<tr>
<th>Date</th>
<th>Jurisdiction</th>
<th>Deadline/Regulatory Change/Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1</td>
<td>Ontario</td>
<td>MOL Occupational Diseases in Mines Blitz begins</td>
</tr>
<tr>
<td>July 7</td>
<td>Ontario</td>
<td>Deadline to comment on WSIB proposed coverage rules for work-related chronic stress</td>
</tr>
<tr>
<td>July 30</td>
<td>Ontario</td>
<td>Deadline to comment on MOL proposal to revise trade classification panels criteria under Ontario College of Trades and Apprenticeship Act, 2009</td>
</tr>
<tr>
<td>Sept. 1</td>
<td>Ontario</td>
<td>MOL Residential Construction Blitz begins</td>
</tr>
<tr>
<td>Sept. 15</td>
<td>BC</td>
<td>General minimum wage goes up to $11.35; liquor servers wage goes up to $10.10</td>
</tr>
<tr>
<td>Sept. 15</td>
<td>BC</td>
<td>Deadline to comment on WorkSafeBC proposal to change method of factoring permanent disability awards into company’s Experience Rating calculation</td>
</tr>
<tr>
<td>Oct. 1</td>
<td>Ontario</td>
<td>Deadline to provide fall protection training to workers exposed to vertical fall hazards at construction sites</td>
</tr>
<tr>
<td>Oct. 1</td>
<td>Ontario</td>
<td>MOL Fall Protection Blitz begins</td>
</tr>
<tr>
<td>Oct. 1</td>
<td>Ontario</td>
<td>MOL Ladder Safety Blitz begins</td>
</tr>
<tr>
<td>Oct. 1</td>
<td>Ontario</td>
<td>General minimum wage goes up to $11.60; increases to minimum wages for students, liquor servers, hunting &amp; fishing guides, and homeworkers take effect</td>
</tr>
<tr>
<td>Oct. 1</td>
<td>Saskatchewan</td>
<td>Minimum wage goes up to $10.96</td>
</tr>
<tr>
<td>Oct. 1</td>
<td>Newfoundland</td>
<td>Minimum wage goes up to $11.00</td>
</tr>
</tbody>
</table>
| Dec. 31| Quebec       | Deadline to offer employees access to voluntary retirement savings plan for employers with at least:  
- 5 eligible employees on Dec. 31, 2016; and  
- 10 or more eligible employees on June 30, 2017 |

## Upcoming 2017 Statutory Holidays

<table>
<thead>
<tr>
<th>Date</th>
<th>Jurisdiction(s)</th>
<th>Holiday</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1</td>
<td>All</td>
<td>Canada Day</td>
</tr>
<tr>
<td>July 9</td>
<td>Nunavut</td>
<td>Nunavut Day</td>
</tr>
<tr>
<td>Aug. 21</td>
<td>Yukon</td>
<td>Discovery Day</td>
</tr>
<tr>
<td>Sept. 4</td>
<td>All</td>
<td>Labour Day</td>
</tr>
<tr>
<td>Oct. 9</td>
<td>All except NB, NL, NS, PE, QC</td>
<td>Thanksgiving Day</td>
</tr>
<tr>
<td>Nov. 11</td>
<td>All except ON, QC and MB</td>
<td>Remembrance Day</td>
</tr>
<tr>
<td>Dec. 25</td>
<td>All</td>
<td>Christmas Day</td>
</tr>
<tr>
<td>Dec. 26</td>
<td>Federal, Ontario</td>
<td>Boxing Day</td>
</tr>
</tbody>
</table>
For the second month in a review, our HR law of the month is the major overhaul of employment standards legislation by a large province. Last month it was Alberta; and on June 1, Ontario introduced Bill 148, aka, the Fair Workplaces, Better Jobs Act, 2017. Here’s an overview of the Bill.

THE BILL

Political Context: Major employment law reform has been in the works for nearly 3 years. It was signalled on July 3, 2014, when Ontario’s newly re-elected Liberal government emphasized jobs and wage growth as a key item in the agenda outlined in its first Throne Speech. In Feb. 2015, the MOL appointed a committee to conduct a full-blown review of current employment laws. Bill 148 is the culmination of the so called Changing Workplaces Review process.

Scope: Bill 148 proposes sweeping changes to 2 sets of laws: the Employment Standards Act (ESA) and Labour Relations Act.

THE 13 ESA CHANGES

1. Minimum Wages
Bill 148 would make Ontario the first Canadian jurisdiction to implement a $15 minimum wage. The increase would be phased in through Jan. 1, 2019 according to the following schedule:

<table>
<thead>
<tr>
<th>Minimum Wage</th>
<th>Current Hourly Rate</th>
<th>Rate as of Oct. 1, 2017</th>
<th>Rate as of Jan. 1, 2018</th>
<th>Rate as of Jan. 1, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>General</td>
<td>$11.40</td>
<td>$11.60</td>
<td>$14.00</td>
<td>$15.00</td>
</tr>
<tr>
<td>Student</td>
<td>$10.70</td>
<td>$10.90</td>
<td>$13.15</td>
<td>$14.10</td>
</tr>
<tr>
<td>Liquor Servers</td>
<td>$9.90</td>
<td>$10.10</td>
<td>$12.20</td>
<td>$13.05</td>
</tr>
<tr>
<td>Hunting &amp; Fishing Guides</td>
<td>$56.95 for less than 5 consecutive hours in a day</td>
<td>$58 for less than 5 consecutive hours in a day</td>
<td>$70 for less than 5 consecutive hours in a day</td>
<td>$75 for less than 5 consecutive hours in a day</td>
</tr>
<tr>
<td></td>
<td>$116 for 5 or more hours in a day (whether or not hours are consecutive)</td>
<td>$140 for 5 or more hours in a day (whether or not hours are consecutive)</td>
<td>$150 for 5 or more hours in a day (whether or not hours are consecutive)</td>
<td></td>
</tr>
<tr>
<td>Homeworkers</td>
<td>$12.55</td>
<td>$12.80</td>
<td>$15.40</td>
<td>$16.50</td>
</tr>
</tbody>
</table>

2. Overtime Pay Rate for Multi-Position Employees
Closing a loophole in current rules, Bill 148 would require employers to pay employees who hold multiple positions with the organization overtime pay equal to the rate for the position actually worked during the overtime period. Effective date: Jan. 1, 2018.

3. More Employee Control Over Work Schedule
The bill gives employees a larger say in their work schedules, including the right to:
- Refuse the employer’s demand to work an unscheduled day on less than 96 hours’ notice;
- Request schedule or location changes after 3 months of employment without reprisal;
- To receive call-in pay of 3 hours per day at regular pay when:
  - They’re called to work, provided they regularly work at least 3 hours per day;
  - They’re on-call but not actually called to work (for each 24-hour period on-call);
  - Their shift is cancelled within 48 hours of its scheduled start.

Effective date: Jan. 1, 2019.

4. Increase in Vacation Pay
Bill 148 increases minimum vacation to 3 weeks of paid vacation per year after 5 years of employment. Effective date: Jan. 1, 2018.

5. New Formula for Public Holiday Pay
Simplifying current rules, calculation of public holiday pay would be based on days actually worked in the pay period immediately before the holiday. Effective date: Jan. 1, 2018.

6. Expansion of Personal Emergency Leave
Bill 148 increases personal emergency leave (PEL) rights by:
- Making PEL mandatory for all workplaces, not just those with 50 or more employees under current ESA rules;
- Increasing PEL to 10 days per year, 2 of which would be paid;
- Expanding the reasons for taking PEL to include domestic or sexual violence.

Effective date: Jan. 1, 2018.

7. Increase in Family Medical Leave
Family Medical Leave would go from 8 weeks over a 26-week period to 27 weeks over a 52-week period. Effective date: Jan. 1, 2018.

8. 2 New Child-Related Leaves
Under Bill 148, employees would be entitled to 104 weeks’ leave for a child’s death (regardless of cause) and a separate 104 weeks’ leave for a child’s crime-related disappearance. Effective date: Jan. 1, 2018.

9. Ban on Doctors’ Notes Requests
Employers would no longer be allowed to ask employees...
for a doctor’s note before taking personal emergency leave. Effective date: Jan. 1, 2018.

10. Equal Pay for Temporary, Casual, Part-Time & Seasonal Employees
One of the most important requirements in Bill 148 is that temporary, casual, part-time and seasonal employees receive pay equal to what full-timers get for doing the same job. Exceptions: It would still be okay to base wage differences on a seniority system or pay systems based on merit, quantity or quality of production. It would also be illegal to take reprisals against such employees for asking about their wage rates. Effective date: April 1, 2018.

11. Equal Pay for Temps from Temp Agencies
Under Bill 148, you’d have to pay “assignment workers,” i.e., temps from temporary help agencies (THAs) the same amount you pay permanent employees for the work they do. The ban on reprisal for asking about wages would also protect temps from THAs. Effective date: April 1, 2018.

12. Temp’s Right to Termination Notice
THAs would have to give temps at least one week’s notice before early termination of an assignment scheduled to last longer than 3 months. Effective date: Jan. 1, 2018.

13. Tougher Penalties for Violations
In addition to increasing penalty amounts and allowing employees to collect interest on unpaid wages, Bill 148 would up the embarrassment factor by authorizing the MOL to publicize the names of individuals guilty of ESA violations and describe what they did wrong. Effective date: Jan. 1, 2018.

THE LABOUR LAW CHANGES
Although the ESA proposals are getting most of the attention, Bill 148 also includes significant changes to labour laws, such as:

- Allowing card-based union certification for building services, home care and community services and temp agencies;
- Giving unions right to access complete list of an organization’s employees and contact info upon demonstrating support of 20% of workforce;
- Allowing certification votes to be held outside workplace or electronically;
- Giving the OLRB the power to consolidate separate bargaining units into one;
- Elimination of the 6-month limit on when employees can return to work after starting a legal strike; and
- Increasing maximum fines to $5,000 for individuals and $100,000 for organizations.