DENTONS

2023 Canadian Employment and Labour law:
Year in review and future trends

Grow | Protect | Operate | Finance

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Introduction:

In a year marked by the breakout arrival of generative AI, the continued evolution of hybrid workplaces and the increasing frequency of labour strikes, there was no shortage of issues vying for the attention of Canadian employers. This guide recaps those legal developments that were particularly notable in the areas of wrongful dismissals, human rights, labour relations, occupational health and safety, pensions and benefits and business immigration. In addition, we recap the legislative changes that employers should know about in British Columbia, Alberta, Ontario, Québec and the federal jurisdiction and identify those trends that we think will shape Canada's workplaces in 2024 and beyond.

Wrongful dismissals

British Columbia

Court upholds termination clauses

In *Forbes v. Glenmore Printing Ltd.(Forbes)*[1] and *McMahon v. Maximizer Services Inc.(McMahon)*[2], the Supreme Court of British Columbia upheld termination provisions in the plaintiffs' respective employment agreements. As a result, the plaintiff employees were not entitled to reasonable notice of termination at common law. In *Forbes*, the employee argued that termination clause was unenforceable because it provided for a lesser entitlement that contemplated by the minimum requirements of the group termination provisions of the *Employment Standards Act* (BC ESA) and should therefore be unenforceable. In this case, the employee was not part of a "group termination"; however, the employee argued that the possible contravention of the minimum statutory requirements rendered the termination clause void. The court rejected this argument. In so doing, the court noted that there was no express provision in the employment contract waiving the employer's obligation to comply with the group termination requirements. Ultimately, the clause at issue was simply aimed at limiting the employee's termination entitlements on an individual termination.

In *McMahon*, the contractual termination clause entitled the employee to payment of an amount greater than the minimum amount required by the BC ESA. The plaintiff argued that the clause was vague and therefore unenforceable as it was unclear how much the employee would receive upon termination without cause. The court rejected this argument and held that a termination clause in an employment agreement must be read in the context of the agreement as a whole. The court will not "disaggregate the words of a contract looking for any ambiguity that can be used to set aside the agreement and, on that basis, apply notice as provided for by the common law." Where the intent of the parties is sufficiently clear, the termination clause in an employment agreement may be valid and enforceable.

Just cause dismissals upheld

On the issue of just cause, the British Columbia Court of Appeal's decision in *Mechalchuk v. Galaxy Motors (1990) Ltd.*[3] serves as a positive development for employers. In that case, the company terminated the employment of one of its most senior ranking employees for just cause after the company discovered that the executive submitted two false expenses claim. Specifically, the executive claimed reimbursement for a dinner and a breakfast with his wife. In making the expense claims, the executive attempted to hide the true nature of the expenses by writing the names of other employees on the receipts. The executive then deliberately attempted to mislead the company during the course of the subsequent investigation. While the expenses totalled only CA$250, the court held that the executive's dishonesty went to the heart of the employment relationship and thus warranted the just cause termination of the executive's employment.

Finally, in a case that made headlines across the country (and was featured in one of our client insights), the BC Civil Resolution Tribunal upheld the just cause dismissal of an employee for time theft. In *Besse v. Reach CPA Inc.*[4] the Tribunal required the employee to repay the sum of CA$2,603.07 representing the wages that she received unlawfully. While time theft is a serious form of misconduct, we caution that this decision was rendered by a quasi-judicial tribunal, and therefore has limited value as a precedent.

Alberta

Employer wins significant damages from dismissed employee

In *Breen v. Foremost Industries Ltd.*,[5] the Alberta Court of King's Bench rejected a former CEO's wrongful dismissal claim and instead ordered the former CEO to pay his former employer over CA$500,000 in damages, as well as punitive damages of CA$50,000. The company dismissed its former CEO for just cause for, among other things, failing to follow company policies and procedures, misrepresenting the company to the Board and serious and habitual misconduct in the discharge of his duties. The former CEO had repeatedly abused his authority by exceeding spending authorization limits, entering into contracts that contained "red flags," issuing unauthorized bonus payments and paid leaves of absences and receiving gifts through misappropriation and embezzlement, despite understanding that he was required to obtain Board approval on such items. He also concealed company issues and his misconduct from the Board. The Court ultimately determined that the former CEO had breached his fiduciary duties as well as his duty to avoid conflicts of interest and his duties of loyalty, honesty and good faith. As a result, the Court dismissed the employee's wrongful dismissal claim. However, in addition to dismissing the employee's claim, the Court went on to find that the former CEO was personally liable for the amounts he had received as gifts and awarded damages for breaches of his fiduciary duties and employment agreement as well as punitive damages totaling almost CA$600,000.00.

Alberta recognizes new tort of harassment

While not a wrongful dismissal action, the Alberta Court of King's Bench's decision in *Alberta Health Services v. Johnston* represents a significant legal development for employers as the court recognized the tort of harassment for the first time. In that case, the defendant used derogatory words such as "terrorist," "retard" and "Nazi" to address a health inspector and made it known that he intended to destroy her life. His harassing rants were often accompanied by photos of the health inspector and her family. The Alberta Court of King's Bench considered whether the facts warranted a civil remedy for harassment, noting that harassment is a justiciable issue and existing torts did not fully address the harm caused by harassment. In recognizing this new tort, the court held that a defendant will have committed the tort of harassment where he/she has: (i) engaged in repeated communications, threats, insults, stalking or other harassment behaviour in-person or through other means; (ii) that he/she knew or ought to have known was unwelcome; (iii) which impugns the dignity of the plaintiff, would cause a reasonable person to fear for his/her safety or the safety or his/her loved ones, or could foreseeably cause emotional distress; and (iv) caused harm. In ruling that the defendant's actions met the legal threshold for the tort of harassment, the court ordered the defendant to pay CA$100,000 in general damages for harassment to the health inspector.

Ontario

Ontario courts award notice periods exceeding 24 months

Ontario courts continued to stretch the boundaries of what constitutes reasonable notice with the Ontario Court of Appeal upholding notice periods in excess of 24 months. In *Lynch v. Avaya Canada Corporation (Lynch)*[6], the Court of Appeal upheld the motion judge's decision awarding a notice period of 30 months. In reaching this decision, the court referenced the exceptional circumstances of the

1. 2023 BCSC 25.
2. 2023 BCSC 4.
3. 2023 BCSC 635, aff'd on appeal 2023 BCCA 482.
4. 2023 BCCRT 27.
5. 2023 ABKB 552.
6. 2023 ONCA 696.

employee's employment that warranted a notice period in excess of 24 months. In particular, the judges noted that the employee had 38.5 years of service and was approaching his 64th birthday at the time of dismissal. In addition, the employee's job was unique and specialized and while there was likely similar and comparable employment in cities like Ottawa or Toronto, "...such jobs would be scarce" in the area where the employee had lived throughout his employment. Similarly, in *Miliwid v. IBM Canada Ltd.*,[7] the Court of Appeal upheld another motion judge's decision awarding an employee 26 months' notice. Like in *Lynch*, the court held that the employee's age (62), years of service (38) and specialized nature of the employee's work constituted exceptional circumstances and therefore justified a notice period in excess of 24 months. The court further found that the motion judge's decision to provide the employee with an additional month of notice (bringing the total to 27 months' notice) was "...appropriate to reflect the circumstances of the COVID-19 pandemic."[8]

Independent contractor on fixed contract required to mitigate damages

Fortunately, it was not all bad news for Ontario employers. In *Monterosso v. Metro Freightliner Hamilton Inc.*,[9] the Court of Appeal held that an independent contractor was required to mitigate his damages notwithstanding that he was engaged pursuant to a fixed-term contract.

Québec

Québec courts provide further guidance on factors that drive reasonable notice calculations

A number of decisions rendered by Québec courts shed further light on the factors to consider when determining the reasonable notice to which an employee terminated without cause is entitled. In *Tecsys Inc. v. Patrao*[10], the Québec Court of Appeal confirmed that the trial judge acted correctly when considering the employer's lack of transparency when dismissing the employee. In the Court of Appeal's view, the employer's failure to be transparent with the employee about the reasons for the dismissal was relevant to explain the challenges faced by the employee in searching for a new job. That said, the court held that the employer's refusal to provide a letter of recommendation cannot result in an extension of the notice period. The purpose of the notice period is to indemnify the employee, not to punish an employer for poor conduct. Still, the damages flowing from an employer's poor conduct will be compensated by the award of a separate head damages in excess of the amount of the indemnity.

In *Bartowiak v. Produits forestiers D&G ltée*[11], the Superior Court reminded employers that while a contractual probationary clause does not relieve the employer of its obligation to demonstrate a reason to dismiss an employee without notice during that period, the courts will consider such a clause in assessing whether the employer had a basis to end the employment relationship without notice.

Employee's refusal to return to work on-site did not warrant cause dismissal

In *Drake v. Trans Continental Equipment Ltd.*[12], the employer dismissed an employee for cause after the employee refused to return to work on-site. The Administrative Labour Tribunal ruled that an employer was permitted to terminate or modify remote working arrangements and that, in this case, the employee's refusal to comply with the employer's directive in this regard was insubordinate. However, given that the employee had 10 years of seniority and a clean disciplinary record, there was no basis to support a summary dismissal.

7. 2023 ONCA 702.
8. *Ibid.*, para. 5.
9. 2023 ONCA 413.
10. 2023 QCCA 879.
11. 2023 QCCS 5.
12. 2023 QCTAT 1218.

Takeaways for employers

Like in past years, the primary takeaway for employers to consider when addressing their potential wrongful dismissal risk is to continue to review the termination provisions in their employment contracts. For employers operating outside of Québec, an enforceable termination provision limits exposure and provides certainty to the business. As such, a review of your employment contract is wise investment for 2024 and beyond.

Outside of without cause dismissals, the courts demonstrated in 2024 that while the threshold for just cause dismissals remains high, it is not impossible. The case law demonstrates that the courts will hold senior executives to a higher standard and where, the employee's conduct is particularly egregious, it may lead to damages against the employee.

Finally, while the application of the tort of harassment is currently limited to Alberta, it is a good example of why employers should be mindful to the potential vicarious liability that could arise as a result of the conduct of their employees. Robust workplace harassment and violence policies and procedures as well as thorough investigation of any harassment complaints will be an employer's strongest defence to an employee's claim of the tort of harassment.

Human rights

British Columbia

Delays continue to plague human rights system

The British Columbia Human Rights Tribunal (the Tribunal) continues to be plagued with significant delays in processing cases. As the Tribunal works to build its members and capacity, 2023 saw the Tribunal cancel hearings and extend its case path pilot practice direction until at least May 2024 (which restricts respondents' ability to file applications to dismiss complaints). Meanwhile, the number of active cases continued to climb to 5,895 as of November 2023. The Tribunal remains mired in COVID-19-related cases, with 946 active cases remaining at the end of 2023. We expect to continue seeing claims take years to reach a final adjudicated decision.

The impact on these ongoing delays was on full display in *Mema v. City of Nanaimo (No. 2)*[13]. In that case, on August 3, 2023, the Tribunal issued a decision that the City of Nanaimo discriminated against its former Chief Financial Officer when it terminated his employment in 2018. The Tribunal concluded that the city terminated his employment based on a discriminatory misconduct report without further investigation. The misconduct report found that the complainant breached the city's policy by using his corporate credit card for 70 personal transactions totalling CA$14,148.97. Notably, the significant amount of time between termination and the date of the hearing arguably exacerbated the complainant's recovery of lost wages, which accrued to CA$777,884.54 (the Tribunal ultimately awarded CA$583,413.40 for lost wages, after it applied a 25% discount due to the fact that publicly available information about his alleged conduct likely played a role in his difficulties finding new employment). From the date of dismissal, it took nearly five years for the Tribunal to process this matter and render its 393 paragraph-long decision. The decision is currently under appeal.

13. 2023 BCHRT 91.

Court of Appeal upholds Tribunal's expanded test for family status discrimination

In *British Columbia (Human Rights Tribunal) v. Gibraltar Mines Ltd.,*[14] the British Columbia Court of Appeal upheld the Tribunal's broadening of the test for family status discrimination. Discrimination can now be established without requiring a unilateral change in the employee's terms of employment, which is more aligned with the approach in other Canadian jurisdictions. Employers should be aware of this broadened scope when dealing with an employee's request for accommodation for family-based needs.

Tribunal recognizes caste-based discrimination

In *Bhangu v. Inderjit Dhillon and others*[15], the Tribunal broke new ground as it recognized caste-based discrimination. Although caste-based discrimination is not referenced as a protected ground in the British Columbia Human Rights Code, the Tribunal recognized this form of discrimination under the existing protected characteristics of race, ancestry, religion, and place of origin. While it may seem novel, caste-based discrimination is garnering recognition in Canada: in 2023 the City of Burnaby voted to add caste as a protected category from discrimination in the city's Code of Conduct, and the Toronto District School Board voted to add caste as a protected category from discrimination in its policies.

Alberta

Trend of higher damages continues

Following the record-equalling pain and suffering damages awarded at the end of 2022 in *McCharles v. Jaco Line Contractors Ltd.,* 2022 AHRC 115[16], the trend of higher damages awards in Alberta Human Rights Tribunal decisions continued into 2023. In *Thievin v Sherlock Clothing Limited,* 2023 AHRC 9[17], an employee whose employment was terminated due to her lack of energy, arising from the fact she had Crohn's Disease, was awarded CA$30,000 for pain and suffering. In *McPherson v. LDV Pizza Bar,* 2023 AHRC 36[18], a part-time server terminated as a result of her pregnancy was awarded CA$25,000 as damages for pain and suffering. The year ended with a CA$40,000 award for the employee in *Pratt v. West Coast Reduction Ltd. (Head Office),* 2023 AHRC 97 (*Pratt*) [19], who was unable to be accommodated in his own role but should have been considered for alternative roles that became available. *Pratt* is also a helpful reminder that employers should consider placing existing employees requiring accommodation into vacant positions as they arise before hiring externally.

Grievance arbitration trumps jurisdiction of human rights commission

For employers with unionized employees, the decision in *Grewal v. Sofina Foods Inc.,* 2023 AHRC 46 [20], confirms that although the Alberta Human Rights Commission has jurisdiction to hear the complaints of unionized employees, once a grievance regarding the same issues is filed, the Commission should decline to do so. This remains the case where the grievance is ultimately discontinued before arbitration.

Benefits of responding immediately to discriminatory conduct in the workplace

Finally, *Tolentino v. HMK Alberta,* 2023 AHRC 112 (*Tolentino*)[21], demonstrates the importance of responding to discriminatory conduct in the workplace immediately. In *Tolentino,* the employer responded immediately to the racist comments of a single employee during a video meeting. The Tribunal held that the single incident did not create a toxic workplace and the employer, by acting immediately to address the incident did not discriminate against the complainant employee.

14. 2023 BCCA 168.
15. 2023 BCHRT 24.
16. 2022 AHRC 115.
17. 2023 AHRC 9.
18. 2023 AHRC 36.
19. 2023 AHRC 97.
20. 2023 AHRC 46.
21. 2023 AHRC 112.

Ontario

More delays continue to plague human rights system

Much like the situation in British Columbia, the Human Rights Tribunal of Ontario (HRTO), continues to experience significant delays. As of January 2023, the HRTO was said to have a backlog of approximately 9,000 cases.[22] The number of reported decisions by the HRTO over the course of 2023 (1734 as reported by CanLii) suggests that the HRTO backlog will continue for some time to come.

Requirement that job applicants be permanently eligible to work in Canada deemed discriminatory

Despite the ongoing backlog, there were some important developments in 2023. Notably, the Court of Appeal restored the HRTO's decision in *Imperial Oil Limited v. Haseeb*[23], which found that a requirement that job applicants be eligible to work in Canada permanently constituted direct discrimination on the basis of citizenship and amounted to discrimination under the Ontario *Human Rights Code*. Although the HRTO did accept that the applicant in the instant case had been dishonest in the application process, the Tribunal also found that the applicant's citizenship status was a factor in Imperial's decision to withdraw its job offer and this was sufficient to find discrimination on the basis of citizenship.

Poisoned work environments and failure to investigate lead to damages.

In *Matheus v. McCann*[24] the Tribunal found the respondent employee and corporation jointly liable to pay the applicant the amount of CA$20,000 for injury to dignity and self-esteem after it concluded that the applicant had been subjected to harassing discriminatory comments which created a poisoned work environment in violation of the Code. Although s. 46(3) of the Ontario *Human Rights Code* precludes a corporation from being held vicariously liable for

22. Tribunal Watch Ontario, " The Human Rights Tribunal of Ontario: What Needs to Happen," January, 2023.
23. 2023 ONCA 364.
24. 2023 HRTO 77.

harassment, where the respondent is the 'directing mind' of the entity, the Tribunal may hold (as it did here) that both the employee and the corporation are jointly and severally liable. Given the length of time between the date the application was filed in 2017 and the hearing date, the respondents were responsible for paying six years of prejudgment interest. Accordingly, the delays can have associated cost consequences for parties to a complaint.

The employer in the case of *Valiquette v. BPM Enterprises Ltd. (Tim Horton's)*[25] was similarly required to pay prejudgment interest over a period of years after the Tribunal found that the employer did not conduct an adequate assessment of the applicant's medical restrictions in accordance with its duty to accommodate. The employer had received a medical note from the employee's doctor and did not take steps following receipt of the note to determine which responsibilities she continued to be able to safely perform. By failing to meet with the employee to fully understand the extent of her disability and properly assess whether the employer could accommodate her, the employer had failed to meet the procedural component of its duty to accommodate. The employee was awarded CA$35,290.40 plus prejudgment interest.

Québec

Even more delays continue to plague human rights system

Like the rest of the country, the *Commission des droits de la personne et de la jeunesse du Québec* (Québec Human Rights Commission) often takes considerable time to process complaints and institute proceedings. However, the Court of Appeal recently overturned a judgment rendered by the Québec Human Rights Tribunal which had ordered a stay of proceedings on the grounds that the 63-month delay between receipt of the complaint by the Commission and its institution of proceedings was excessive [26]. The court concluded that while the delay was indeed excessive and unjustified, the evidence did not allow the Tribunal to conclude that it has created a significant prejudice for the employer, which is required to justify a stay of proceedings. On the merit, this case involves a complaint relating to the administration of an allegedly discriminatory pre-employment medical questionnaire.

Duty to accommodate requires a rigorous review of other positions in the organization

In *Association des procureurs aux poursuites criminelles et pénales (Létourneau) v. Directeur des poursuites criminelles et pénales* [27], a public prosecutor was dismissed after his employer concluded that the permanent functional limitations and accommodations requested by him in connection with diagnoses of giftedness and ADHD amounted to undue hardship. The adjudicator ruled that the employer had met its obligation to properly assess whether the accommodations required for the employee to continue in his current position amounted to undue hardship. However, the adjudicator stated that employer also had to assess whether it could accommodate the employee in another prosecutor's position within the organization without incurring undue hardship. To discharge this burden, it was not enough for the employer to merely ask the opinion of some managers, the employer had to rigorously and exhaustively assess the tasks of those other positions against the accommodations requested by the employee. The adjudicator noted that even if this is a lengthy and complex process, an employee's rights cannot be undermined by administrative considerations that do not constitute undue hardship. While it's true that the steps expected of a small employer may not be as stringent as those expected of a government actor, the fact remains that all employers must put in place a rigorous process to determine whether they can accommodate an employee living with a disability.

25. 2023 HRTO 53.
26. Commission des droits de la personne et des droits de la jeunesse (N.R.) c. Groupe Santé Medisys inc, 2023 QCCA 395.
27. 2023 QCCFP 7.

Takeaways for employers

As noted above, the story for Canadian employers in 2023 when it comes to human rights matters is delay. The provincial human rights tribunals are struggling to manage a significant volume of cases which is leading to access to justice concerns for complainants and respondents alike. For those cases that are being adjudicated, employers are .reminded to act quickly in response to discrimination claims and institute rigorous processes when considering whether an employee's limitations can be accommodated.

Labour relations

The year of the strike

2023 was the year of the strike as virtually every sector of the economy experienced some sort of labour disruption. In November 2023, Economic and Social Development Canada reported that the number person-days not worked due to work stoppages reached an 18-year high with approximately 2.2 million person-days not worked.[28] Interestingly while the amount of strikes in 2023 was relatively consistent with past years, the average length of 2023's strikes was the highest since 2017 with an average duration of 75.4 days.[29] Beyond the data, employers also experienced a roller coaster of emotions with failed ratification votes and allegations of unfair labour practices during bargaining. Ultimately, the mix of high inflation, tight labour markets and motivated union members yielded significant monetary gains for many unionized workforces.

Litigation over mandatory vaccination policies continues

In *Toronto (City) v. Toronto Civic Employees' Union, Cupe, Local 416*[30], a COVID-19 vaccination policy, which was held to be reasonable as of May 2022, was held to be unreasonable as of September 1, 2022. The arbitrator determined that the risks of transmission and severity of symptoms of COVID-19 were no longer severe enough to warrant excluding unvaccinated employees from the workforce. The employer, who returned unvaccinated employees to the workplace as of December 1, 2022, was ordered to pay unvaccinated employees the wages they would have earned from September 1, 2022, onward (as long as they returned to work promptly after being recalled).

In *Lakeridge Health v. CUPE, Local 6364*[31], the mandatory COVID-19 vaccination policy introduced by a hospital part-way through the COVID-19 pandemic was upheld as reasonable. The hospital was able to implement measures other than mandatory vaccination to control the spread of COVID-19, such as rapid-testing, until October 2021. At this point, the hospital argued that staffing shortages and the introduction of new COVID-19 variants meant that they had to introduce mandatory vaccination. Accordingly, those who did not vaccinate were terminated from their employment after a short unpaid leave. The arbitrator found that the policy, and the terminations, were reasonable given the life-saving treatment the hospital provided to the public and the hospital's need to fill vacancies. However, the arbitrator found that a four-week unpaid leave should have predated the terminations, to allow employees to reflect on their vaccination decision.

28. Government of Canada Statistics, Economic and Social Development Canada, Work stoppages in Canada, by jurisdiction and industry based on the North American Industry Classification System (NAICS), Employment and Social Development Canada - Labour Program occasional (number unless otherwise noted), online: https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410035201
29. *Ibid.*
30. 2023 CanLII 94043 (ON LA)
31. 2023 CanLII 33942 (ON LA)

Alberta modernizes its labour relations to reflect new realities

In Bioware *ULC v. United Food and Commercial Workers Canada Union, Local No. 401*[32], the Alberta Labour Relations Board (the Board) addressed the regulation of picketing for remote workers and set out a framework for determining place of employment for such workers in the context of a strike or lockout. In determining place of employment the Board indicated that it would consider whether the employer has a location that the employee can or does attend if not working remotely; whether the employee connects with or logs into a specific location when working remotely; to whom the employee reports, and where are they located ;and to whom the employee provides a service, and whether it is one location or multiple locations. The Board also rejected the idea that an employee's home could be considered a place of employment for the purpose of picketing.

In *United Food and Commercial Workers Canada Union, Local No. 401 v. Rmsi-jtac Equipment Holdings Lp*[33], the Alberta Labour Relations Board approved the use of electronic petition evidence in union certification applications and provided additional guidance regarding when such evidence will be accepted and how the Board will assess the authenticity of electronic petitions.

Finally, the Alberta Labour Relations Board amended its voting rules in 2023 to include electronic voting for Representation Votes, Proposal Votes and Strike and Lockout Votes.

Québec decisions addresses whether remote workers can be replacement workers

Québec's Labour Code (the Code) limits employers' right to use replacement workers during a strike or lockout. As part of this restriction, the Code includes a provision prohibiting an employer from "utilizing, in an establishment where a strike or lockout has been declared, the services of an employee he employs in the establishment to discharge the duties of an employee who is a member of the bargaining unit on strike or locked out."

In *Group CRH Canada Inc. v. Tribunal administratif du travail*,[34], the union filed a complained against the employer's practice to have unionized employees performing, from their home office, the work of the locked out workers. The Administrative Labour Tribunal ruled that the "establishment" in which an employer must not use replacement workers is to be understood as what it called a "deployed establishment" that include employee's home offices. The Superior Court granted the judicial review of this decision, stating that the Tribunal's expansion of the term "establishment" to encompass the residence of an employee working remotely was neither rational nor logical. We expect further clarification on this issue as the Québec Court of Appeal has granted the union leave to appeal the Superior Court decision.

Takeaways for employers

As inflationary pressures subside and labour markets loosen, employers will hopefully experience a decline in strike activity. That said, the ability of employers to negotiate a collective agreement with their union counterparts will ultimately be dictated by the nature of their own unique labour relations.

In addition, in a decision with significant implications for Ontario's public sector, the Ontario Court of Appeal is shortly expected to release its decision regarding whether Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act, 2019*, is unconstitutional. The Superior Court of Justice found that Bill 124, which capped wage increases to 1% annually across the public sector, was unconstitutional due to its restriction of collective bargaining.

32. 2023 CanLII 109272 (AB LRB)
33. 2023 CanLII 104317 (AB LRB)
34. 2023 QCCS 1259.

Occupational health and safety

Alberta and Québec amend their health and safety laws

Effective March 31, 2023, the Alberta government amended the *Occupational Health and Safety Code* to impose additional obligations on employers to ensure the health and safety of their employees. These obligations included developing an emergency transportation plan, implementing new standards for first aid kits and personal protective equipment, imposing a reduced threshold for noise exposure and as well as additional amendments associated with oil and gas wells, explosives, mining, overhead powerline and electrical utility workers, working in confined spaces and the control of hazardous energy.

On November 23, 2023, Québec's Minister of Labour tabled Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace*. This Bill aims to prevent and fight psychological harassment and sexual violence in the workplace through amendments to the *Act respecting industrial accidents and occupational diseases*, the *Act respecting labour standards*, the *Act respecting occupational health and safety* and the *Labour Code*. In particular, the Bill proposes to amend the *Act respecting occupational health and safety* to include a definition of the term "sexual violence" and to provide the government with the regulatory authority to implement measures to be taken by an employer to prevent or end sexual violence.

Supreme Court renders highly anticipated health and safety decision

Finally, on November 10, 2023, the Supreme Court of Canada rendered its highly anticipated judgment in *R v. Greater Sudbury (City)*[35] which considered whether "control" of the work site has any bearing on an employer's liability under the *Occupational Health and Safety Act* (Ontario). In a rare tie decision, half of the Court upheld the Court of Appeal's decision ruling that "control" cannot be considered in relation to the *actus reus* of an offence as "control" is not an element that is expressly referenced in the *Occupational Health and Safety Act* while the other half of the court found that "control" over workers at a work site was relevant to the *actus reus* of the offence. Although the Supreme Court has stated that a tie decision is not binding, the Court has also concluded that a tie decision is entitled to "great respect."[36] Accordingly, in our view, we anticipate that the line of reasoning upholding the Ontario Court of Appeal's decision will likely carry more weight and be afforded "great respect" by the Supreme Court and lower courts. In other words, the element of "control" will not likely be considered in relation to the *actus reus* of an offence. As such, employers will likely inherit the liability associated with all workers on a construction site, as opposed to merely the workers over whom the employer has control.

Takeaways for employers

In light of the evolving scope of occupational health and safety legislation, we continue to encourage employers to conduct regular reviews of their occupational health and safety policies and procedures to ensure that the policies and procedures remain compliant with applicable occupational health and safety legislation.

35. 2023 SCC 28
36. *Minister of National Revenue v. The Royal Trust Co., [1931] SCR 485.*

Pensions and benefits

Bill C-228 Pension Protection Act

On April 27, 2023, Bill C-228, the *Pension Protection Act*, received Royal Assent. The bill significantly expands the priority for pension deficits in a bankruptcy and insolvency, providing priority to amounts owing to pension plans over secured creditors. Prior to Bill C-228, only contributions deducted from an employee's pay and unpaid normal cost contributions had a priority. Bill C-228 significantly increases the protection afforded to defined benefit (DB) pension plans by providing priority for special payments that the employer is required to pay to the pension fund to liquidate an unfunded liability or a solvency deficiency and any amount required to liquidate any other liability or solvency deficiency of the fund. The bill is in force for any new pension plans that are created as of April 27, 2023; however, there is a four-year transition period for any existing pension plans. Various questions remain including for example, whether the bill will apply to quasi-DB plans including multi-employer pension plans (MEPPs), target benefit plans and jointly sponsored pension plans (JSPPs) and it is expected regulations will be released addressing these issues.

Cyber security incident reporting

On June 30, 2023, the Office of the Superintendent of Financial Institutions (OSFI) released a draft technology and cyber security incident reporting advisory together with an accompanying incident reporting form for federally regulated private pension plans. The advisory sets out OSFI's expectations for when and how a technology or cyber incident that affects a federally regulated private pension plan should be reported to OSFI. A final version is expected in 2024 following a consultation period ending in the fall of 2023.

On November 17, 2023, following a stakeholder consultation, the Financial Services Regulatory Authority of Ontario (FSRA) also released a guideline on managing information technology (IT) and cyber risks for in industries it regulates, including pension plans. The guideline is effective as of April 1, 2024, and provides plan administrators with tools to navigate and mitigate risks to their IT systems, infrastructure and sensitive data, as well as the expectations to report incidents to FSRA. Pension plans registered in Ontario should review their governance structure to ensure it has proper governance and oversight of its IT risks in preparation for the FSRA guideline being in force.

CAPSA Guideline consultations

The Canadian Association of Pension Supervisory Authority (CAPSA) held two consultations in 2023, both on guidelines previously consulted on in 2022, including Guideline No.3 – Capital Accumulations Plans (CAP) and new Pension Plan Risk Management Guideline. CAPs include defined contribution pension plans, RRSPs, DPSPs, LIRAs, RRIFs, LIFs, pooled registered pension plans (PRPPs), VRSP and TFSA's. The CAP Guideline is revised to address fiduciary duty, decumulation, value for money, service providers versus sponsors and the definition of CAPs. The Pension Plan Risk Management Guideline provides guidance to plan administrators of DB, defined contribution (DC), pooled registered, target benefit and hybrid pension plans on managing risks with third parties (outsourcing), cybersecurity, ESG (environmental, social, governance), use of leverage, Target Pension Arrangements and Investment Risk Governance.

Larkin v. Johnson: Fiduciary duties of pension plan trustees

In addition to changes to legislation and guidelines from regulators in 2023, in the last few days of 2023, the Supreme Court of Canada (SCC) declined hearing an appeal of *Larkin v. Johnson*, 2023 BCCA 116, in which the plaintiffs claimed breach of fiduciary duties against trustees of a multi-employer pension plan following a decision to increase the age of retirement as a result of funding concerns. The leave application stemmed from a decision from the British Columbia Supreme Court which dealt with, among other issues, the fiduciary duty of plan trustees and highlighted the importance of a well documented governance process. The BC Court of Appeal upheld the decision of the lower court in declining to interfere with the trustee's decision-making process and the plaintiff sought leave to appeal to the SCC and were denied.

Alberta considers leaving the Canada Pension Plan

2023 also saw Alberta announce plans to consider leaving the Canada Pension Plan and create an Alberta Pension Plan. Alberta is currently considering the results of input from the public they received after an online survey and virtual sessions were held.

Takeaways for employers

Pension regulators are continuing to update governance guidelines to assist pension plan administrators manage various risks, including increasingly emerging risks in information technology and cybersecurity. Employers with retirement plans should ensure they have a governance process in place which is regularly revised as new risks are identified and recommendations are provided by regulators.

Business immigration

Economic immigration and the temporary foreign workforce continue to form an essential strategy to address labour shortages and support economic growth in Canada. Immigration, Refugees and Citizenship Canada (IRCC) has set ambitious and increased goals of welcoming approximately 500,000 new permanent residents each year[37]. Unprecedented growth of immigration levels, in conjunction with large-scale digitization efforts by IRCC, has contributed to processing challenges and prolonged backlogs of applications, often elongating and exacerbating the process for Canadian employers to hire/retain foreign workers. However, the increasing use of temporary public policies in the past year has allowed IRCC to quickly respond to acute local labour market needs as well as various humanitarian crises around the world. These measures often entail facilitated processing and work authorization for eligible foreign nationals, which employers can leverage to authorize the work of temporary foreign workers. A few examples out of the myriad of temporary public policies introduced in 2023 include the temporary lifting of work hour limitations on international students, exemptions for U.S. H-1B work visa holders to obtain streamlined work permits and priority processing and certain fee exemptions and streamlined work and study permit applications for those affected by armed conflict or natural disasters, such as nationals of Israel, the Palestinian Territories, Sudan, Morocco, Türkiye and Syria.

While most of the familiar, existing employer-sponsored work authorization categories (e.g., intra-company transferee, reciprocal employment, free trade agreement-based professional and significant benefit work permits) remained largely unaltered, the following changes to the Temporary Foreign Worker Program and International Mobility Program are notable:

37. "Notice - Supplementary Information for the 2024-2026 Immigration Levels Plan," November 1, 2023, Immigration, Refugees and Citizenship Canada, online: https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2024-2026.html

Introduction of the Recognized Employer Pilot (REP) program: The REP offers a streamlined application process to obtain labour market impact assessments (LMIAs) for employers with a recent history of LMIA approvals and compliance. Once deemed eligible, employers enjoy a simplified LMIA application process for defined, in-demand sectors. Currently, the list (which is expected to evolve with the needs of the labour market) includes occupations in agriculture, healthcare, engineering and architecture, as well as tradespeople and general labourers.

- Changes to International Experience Canada (IEC) programs: Canada has signed new bilateral agreements with Iceland. It has also updated its agreements with United Kingdom and South Korea whereby applicants are permitted expanded and repeated participation in certain categories. In addition, the list of recognized organizations for IEC has been updated.

Takeaways for employers

The immigration landscape continues to expand and grow ever more complex, as it adapts to meet labour market needs. Employers should be alive to quickly changing requirements for employer compliance, as well as applicable processing times and steps, in order to leverage the dynamic programs and policies strategically, while also limiting exposure. Having a sound strategy to monitor your foreign worker population and compliance with respect to the terms of their employment (including positions, wages and benefits and expiry dates) will minimize risk of employer non-compliance and unexpected loss of legal immigration status by employees. Many programs continue to target demonstrated areas of labour shortage, such as the technology sector and distinct occupations in healthcare and agriculture; and as such, employers conducting business in these spaces should regularly consider the various programs available. Our specialized immigration team can assist in reviewing your global mobility and employer compliance strategies to strengthen your workforce and protect your business.

Legislative changes

British Columbia

On February 1, 2023, two amendments to British Columbia's *Freedom of Information and Protection of Privacy Act* came into force that impact how public sector employers must address privacy issues in BC:

1. A public body must give notice of a "privacy breach" to any "affected individual" and to the Office of the Information and Privacy Commissioner of British Columbia; and
2. All public bodies must have a Privacy Management Program.[38]

On May 11, 2023, the *Pay Transparency Act* was passed, imposing several key obligations on employers with workers in British Columbia:

- *Pay transparency discussions:* Employers are prohibited from asking job applicants about their previous pay rate (note this does not prohibit employees from disclosing that pay rate voluntarily or employers from asking about pay expectations). Employers are also prohibited from adversely impacting an employee who asks about their pay, reveals their pay to another employee or job applicant or makes inquiries/complaints about pay transparency reports.
- *Job posting requirements*: Publicly advertised job postings for specific positions must include the expected pay or pay range for the position. This applies to job postings made by third parties on behalf of an employer (including recruiters) and applies to job postings in non-BC jurisdictions, if the position is open to BC residents and may be filled by someone living in BC. This requirement does not apply to general recruitment campaigns or to internal postings.
- *Pay transparency reports:* Effective November 1, 2024, employers with 1,000+ employees in BC will be required to complete and post pay transparency reports, which will be published annually on June 1 by the Ministry of Finance. In early 2024, the government released additional information on pay transparency reporting obligations, so we will be providing updated guidance on this obligation in the coming weeks.[39]

Bill 41, implementing the *Workers Compensation Amendment Act (No. 2), 2022*,[40] received royal assent on November 24, 2022; however, employers should be aware of two important new obligations that came into force on January 1, 2024, and are **retroactive** in application:

1. *Duty to Cooperate:* Employers and workers have a reciprocal duty to cooperate in the worker's return-to-work process for any injuries sustained no more than two years before January 1, 2024 (January 1, 2022).
2. *Duty to Maintain Employment:* Employers that regularly employ at least 20 workers have a duty to maintain an injured worker's employment for injuries sustained no more than six months before January 1, 2024 (July 1, 2023).

We anticipate further amendments or regulations to the *Pay Transparency Act* and that the Director of Pay Transparency may increase efforts to ensure compliance with the legislation (including potentially implementing a complaint-driven enforcement system).

There will also be new requirements imposed in relation to gig workers to provide them with better working conditions and protections, including basic employment standards. Bill 48 was passed on November 30, 2023, but its changes to the *Employment Standards Act* and *Workers Compensation Act* relevant to gig workers are not in effect and will be implemented and detailed through regulation in the coming months.

38. For more information on the FOIPPA updates see "Mandatory breach notification for public sector employers introduce in British Columbia."
39. For more detailed information see "Impact of Pay Transparency Act on employers."
40. For an overview of the changes, see "What employers need to know about proposed amendments to British Columbia's *Workers Compensation Act*")

Alberta

On March 31, 2023, changes to the Alberta *Occupational Health and Safety Code* (OHS Code) came into effect. This was the first significant update to the OHS Code since 2009 and part of an ongoing three-year review to ensure that the provisions of the OHS Code remained consistent with current workplaces, standards, best practices, new technologies and other Canadian jurisdictions. The changes involved various Parts of the OHS Code, including:

- **Part 1 – Definitions and general application**
    - Some definitions within Section 1 of the OHS Code were amended, and others were added to provide clarity or align with previous amendments to the Alberta *Occupational Health and Safety Act* (OHSA). In addition, several terms were added, amended, changed or removed throughout the various Parts to align with new standards, changes to the OHSA or best practices.
- **Part 5 – Confined spaces**
    - Employers are responsible for ensuring that the atmosphere of a confined space is tested by a competent worker before a worker enters the space. Employers may now use confused space entry monitoring systems.
- **Part 6 – Cranes, hoists and lifting devices / Part 23 – Scaffolds and temporary work platforms / Part 36 - Mining**
    - The requirements for roofing hoist and suspended scaffolding inspections were amended from daily to "reasonably practicable" intervals. Similarly, mining plans are now required to be updated at "reasonably practicable" intervals. Excavation boundaries have also been updated to "safe distances" instead of previously prescribed distances.
- **Part 11 – First aid**
    - First aid training and first aid kits must comply with various CSA Standards. Workers were not required to obtain new first aid training certificates until their current certificates had expired. First aid training providers were also required to update their course names to align with CSA Standards.
    - Employers or prime contractors are responsible for developing and implementing an emergency transportation plan. As part of the plan, employers or prime contractors must ensure that injured workers are accompanied by a first aider during emergency transport.
- **Part 15 – Managing the control of hazardous energy**
    - The changes to Part 15 were aimed at clarifying work site party responsibilities, streamlining wording to improve clarity and removing duplication of requirements. The changes allow for flexibility to operate machinery in cases where machinery could still be safely operated without turning it off. Revisions also make it clear that employers are responsible for identifying personal locks that have been assigned, controlling the transfer of personal locks amongst employees and ensuring employees secure their personal locks. In addition, employers must develop and implement certified complex group control procedures when individual locks would provide insufficient protection.
- **Part 16 – Noise exposure**
    - The threshold for conducting a noise exposure assessment was reduced from 85 dBA to 82 dBA. The noise exposure assessment and threshold dosimeter must be conducted and used in accordance with updated CSA Standards. Revised requirements also clarify that an employer's entire noise management program must reviewed on a yearly basis.
    - There are also new requirements to fit-test workers for any hearing protection used in the performance of their duties. Further, workers who have been exposed to excess noise must be provided with audiometric tests in accordance with CSA Standards.
- **Part 17 – Overhead power lines / Part 40 – Electrical utility workers**
    - Revised wording clarifies that both workers and employers are responsible for ensuring that workers maintain a safe limit of approach distances when working near overhead power lines. In addition, the term "energized" was removed from Part 17 such that all power lines are to be assumed to be energized.
- **Part 33 – Explosives**
    - The explosive requirements within the OHS Code have, for the most part, been consolidated or moved into Part 33. All explosives must now be stored in a magazine and destroyed in accordance with manufacturer specifications (or safely by a blaster if no specifications are available). Various updates to weatherproofing requirements also now apply to all worksites where explosives are used. In addition, blaster's report requirements now apply to all worksites where explosives are used.
- **Part 37 – Oil and gas wells**
    - Prime contractors, or employers if there is no prime contractor, are now obligated to provide site-specific orientation to a worker before the worker comes into a worksite for the first time. The site-specific orientation must cover: site-specific hazards; work procedures that must be followed; hazard controls in place to protect workers; required personal protective equipment (PPE); an emergency response plan; processes for reporting hazards; site-specific processes for addressing undue hazards; work refusals and resolution; and any other matter required to ensure the health and safety of workers at the work site.
    - In addition, employers have new requirements to keep records of inspections and repairs for equipment, including leased equipment.

Other changes to the OHS Code were aimed at updating PPE standards to create harmonization of requirements across Canadian jurisdictions. These amendments were reflected in Parts 9, 18, 39 and 41 of the OHS Code.

Ontario

Bill 79 (the *Working for Workers Act, 2023*), received royal assent in October. Resulting key changes to the *Employment Standards Act, 2000* (ESA) and *Occupational Health and Safety Act* (OHSA) include the following:

- Remote workers who work solely from their home office are now counted for the purposes of determining whether the 50-employee mass termination threshold has been met, and they are entitled to heightened notice of termination in the event of a mass termination. More particularly, the definition of an employer's "establishment" now explicitly includes an employee's home office where the employee solely works from that home office and does not perform work at any other location where the employer carried on business.
- The maximum corporate fine for a violation of the OHSA has been increased to CA$2 million.
- There are now additional reasons for which individuals may take a reservist leave, including for treatment, recovery or rehabilitation related to an illness or injury caused by participation in a military operation or training.

Amendments to the ESA and OHSA which were introduced in 2022 through Bill 88 (the *Working for Workers Act,* 2022), came into force in 2023:

- The ESA has been amended to include definitions for "business consultant" and "information technology consultant" and to clarify that where an individual (1) meets the definition of a "business consultant" or

"information technology consultant" in the ESA; (2) provides services through a personal service corporation or a registered sole proprietorship as opposed to in their own name; and (3) receives a fee of CA$60/hour or greater, they will not be considered an employee within the purview of the ESA. A failure to meet all of these requirements means that a contractor will be deemed to be an employee for ESA purposes.

- Certain employers are now required to provide and maintain in good condition a naloxone kit in workplaces where they are aware, or ought to be aware, that there may be a risk to a worker having an opioid overdose.

On July 1, 2023, the *Working for Workers Act, 2021* came into effect, requiring all Temporary Help Agencies and recruiters to hold licenses for same by January 1, 2024.

On November 14, 2023, the Ontario Government introduced Bill 149 (the *Working for Workers Four Act, 2023*), which, if passed, will further amend Ontario employment legislation. Of note, these proposed amendments will require employers to include expected salary ranges in their open job postings and to disclose of the use of artificial intelligence (AI) during the hiring process. As well, the proposed amendments will prohibit employers from requiring that job applicants have prior Canadian work experience.

While the legislation has not yet come into force, it is anticipated that the *Digital Platform Workers Rights Act* will serve to protect gig economy workers beginning sometime in 2024.

Québec

In October 2021, Québec amended its health and safety legislation by passing the Act to modernize the occupational health and safety system (the AMOHS). As a result of these amendments, on April 6, 2023, changes to the Act respecting industrial accidents and occupational diseases (the AIAOD) came into effect which allow decisions concerning opinions of the Bureau d'évaluation médicale, the Comité spécial des présidents, the Comité des maladies professionnelles oncologiques and decisions concerning financing to be challenged directly before the Administrative Labour Tribunal, without going through an application for review with the *Direction générale de la révision administrative*.

Bill 19, *An Act respecting the regulation of child labour* was passed on June 1, 2023, and, with a few exceptions, has been in effect since that date. The main goals of this new legislation are to ensure greater success at school and protect the health and safety of children. As a result, individuals under the age of 14 can only work in specific types of jobs (artistic production, newspaper delivery, childcare, homework help and tutoring, certain jobs supervised by an adult) with parental authorization. Furthermore, children subject to mandatory school attendance can work a maximum of 17 hours per week, including 10 hours from Monday to Friday (during the school period). Employers who violate the law will be liable to a fine of CA$600 to CA$6,000 for a first offence and up to CA$12,000 for repeat offences.

Looking ahead to 2024, Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace* discussed in the Occupational Health and Safety section, will be studied in parliamentary committee and we can expect the measures it contains to have significant implications for employers, who will have to adapt their policies and practices accordingly.

Federal

2023 brought a number of important changes to the Canada Labour Code which impacted the operations of Canada's federally regulated workplaces. Amongst these changes were new requirements to reimburse employees for work-related expenses incurred in the course of their employment and, effective December 15, 2023, to provide menstrual products in each toilet room.

As we enter 2024, the Government of Canada is intending to introduce a number of regulatory initiatives as part of its "Forward Regulatory Plan," through which the Labour Program intends to propose or finalize at least twelve regulatory initiatives.

The first "Forward Regulatory Plan" initiative coming into force in 2024 relates to the *Exemptions from and Modifications to Hours of Work Provisions Regulations*. Amendments came into effect on January 4, 2024, for employers in the rail transportation, banking, and telecommunications and broadcasting sectors, and will come into effect on June 4, 2024, for employers in the air transportation sector.

Additionally, effective February 1, 2024, individual notice of termination requirements under the *Canada Labour Code* will increase. These amendments were introduced in the *Budget Implementation Act, 2018, No. 2*, and will require employers to provide employees with graduated notice of termination entitlements based on the employee's length of continuous employment with the employer (up to a maximum of 8 weeks). Additionally, effective February 1, 2024, employers will have to provide dismissed employees with a written statement that sets out an employee's vacation benefits, wages, severance pay and any other benefits or pay arising from the employee's employment as of the date of the statement.

Federally regulated employers should also take note of the following deadlines coming up in 2024:

By June 1, 2024: Employers with 10-99 employees will need to publish their first accessibility plan under the *Accessible Canada Act* and the *Accessible Canada Regulations*.

- By June 1, 2024: Employers with 100 or more employees will need to publish their fist annual progress report in accordance with the *Accessible Canada Act* and the *Accessible Canada Regulations*.
- By September 3, 2024: Employers with 10 or more employees will need to publish their pay equity plan in accordance with the *Pay Equity Act* and the *Pay Equity Regulations*. Employers should note that under the *Pay Equity Act* employers must post their draft pay equity plan for comments from employees for at least 60 days, which must be done prior to the publishing of the final version of the pay equity plan as the employer must consider any comments provided when preparing such final version.

Lastly, regulations related to the following topics are expected to be published in 2024 after consultations with stakeholders conclude:

- Regulations defining circumstances and conditions under which certain employers may provide benefits to employees under a long-term disability plan that is not insured;
- Amendments to the *Canada Occupational Health and Safety Regulations* to address health and safety requirements for level of sound and personal protective equipment, to make the toilet requirements more inclusive, and to update exposure limits and regulatory requirements (updates to industry-specific occupational health and safety regulations are also expected); and
- Development of an administrative monetary penalty system to ensure compliance with the *Pay Equity Act*.

Trends to watch for in 2024

1. **Generative AI in HR**

   The emergence of ChatGPT and other forms of generative AI in 2023 will continue to impact the world's workplaces as people leaders across the globe grapple with how to harness this technology without exposing their organizations to unnecessary and unintended risks. In a report published by OpenAI (the creator of ChatGPT), researchers concluded that "...80% of the U.S. workforce could have at least 10% of their work tasks affected by the introduction of GPTs, while around 19% of workers may see at least 50% of their tasks impacted."[41] As the adoption of generative AI spreads, so too will the degree of disruption across all workplaces. Canadian governments began to respond in 2023 as Ontario introduced new measures requiring employers to disclose the use of AI if they are using the tool to screen, assess or select applicants for a position. Going forward, employers should begin to develop their own strategies to respond to this new technology. As a first step, employers should consider implementing a workplace policy governing the use of generative AI by their employees. If you are interested in such a policy, Dentons is offering a template policy for a fixed fee of CA$1,000 (exclusive of taxes). You can request a copy of the policy here.

2. **Pay transparency**

   The move to greater pay transparency continued to gather steam in Canada as British Columbia joined Prince Edward Island as the only provinces to implement pay transparency laws. Under BC's *Pay Transparency Act*[42], which became effective on November 1, 2023, all provincially regulated employers in British Columbia are required to include salary or wage information on all publicly advertised job postings. Depending on the size of their workforce, private sector employers will be required to complete and post pay transparency reports beginning on November 1, 2024. Ontario has since followed suit as it tabled new legislation which, if passed, would require employers in that province to include the expected compensation or the range of expected compensation for any publicly advertised job posting.

   According to a survey by the US National Women's Law Center, over 25% of the U.S. labour force are already covered by some sort of pay range transparency law.[43] It would therefore seem likely that Canadian employers can expect to see similar legislation across the country.

3. **Banning non-disclosure agreements?**

   The Ontario government has been active in reshaping the province's employment laws.

   In 2021, the province became the first jurisdiction in North America to require employers with 25 or more employees to have a written policy about employees disconnecting from work.[44] As part of the same legislative overhaul, Ontario also became the first Canadian jurisdiction to ban non-competition agreements in employment contracts. [45] It looks like more change is on the way in 2024, as in a press release announcing further amendments to the *Employment Standards Act, 2000*, in the Fall of 2023, the Government announced that it would be launching consultations to "[r]estrict the use of Non-Disclosure Agreements (NDAs) in the settlement of cases of workplace sexual harassment, misconduct or violence."[46] Such a ban is not without precedent as Prince Edward Island became the first jurisdiction in Canada to limit the use of NDAs in cases of discrimination and harassment with the passage of the *Non-Disclosure Agreements Act*[47] in November 2021. Moreover, Nova Scotia and Manitoba have both tabled similar legislation but those laws have not yet passed. Indeed, Ontario's official opposition, NDP, tabled their own version of a proposed legislative ban on NDAs in June 2023.

   Given the recent legislative activity, employers should monitor this area for further development.

4. **Modern slavery reporting requirements**

   As we detailed in our client insight, on May 3, 2023, Canada passed its first reporting legislation for modern slavery and child labour. Reporting Entities are now required to file their first set of reports by May 31, 2024. With the May 31, 2024, deadline fast approaching, Public Safety Canada released its long-awaited guidance on the reporting requirements set out by the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*. You can read our insight on this guidance here.

   This new reporting requirement is not a small undertaking and will require careful planning and review by impacted employers. Moreover, as this is the first year of reporting, employers should ensure that they remain aware of all guidances published by Public Safety Canada on this issue.

Conclusions

Canada's workplace laws continue to change at a rapid pace. If you have any questions, please contact any member of our national employment, labour, pensions and immigration law team.

41. "GPTs are GPTs: An early look at the labor market impact potential of large language models," March 17, 2023, Tyna Eloundou, Sam Manning, Pamela Mishkin, Daniel Rock, online: https://arxiv.org/abs/2303.10130.
42. S.B.C. 2023, c. 18.
43. "Nearly 21 Million Women Benefit from Pay Range Transparency Laws. Another 18.5 Million Could Soon," March 21, 2023, National Women's Law Centre, online: Nearly 21 Million Women Benefit from Pay Range Transparency Laws. Another 18.5 Million Could Soon. - National Women's Law Center (nwlc.org).
44. "Backgrounder: Working for Workers Act, 2021," October 25, 2021, Government of Ontario, Ministry of Labour, Training and Skills Development, online: BACKGROUNDER: Working for Workers Act, 2021.
45. Ontario Passes the Working for Workers Act," November 30,2021, Government of Ontario, Ministry of Labour, Training and Skills Development, online: Ontario Passes the Working for Workers Act | Ontario Newsroom.
46. "Backgrounder: Working for Workers Four Act, 2023," November 14, 2023, Government of Ontario, Ministry of Labour, Immigration, Training and Skills Development, online: BACKGROUNDER: Working For Workers Four Act, 2023.
47. RSPEI 1988, c N-3.02.

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