

2025 Year in Review ~ What to Expect in 2026 ...

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Agenda

■ **What's keeping employers up at night?**

- ☐ Termination provisions
- ☐ U.S. tariffs
- ☐ AI in the workplace
- ☐ Return-to-office mandates

■ **Heading into 2026**

- ☐ Pay transparency and job posting rules
- ☐ Minimum wage and statutory leave entitlements
- ☐ Increased fines and administrative penalties
- ☐ Labour mobility legislation

What's Keeping Employers Up at Night?



What's Keeping Employers Up at Night?

Termination Provisions

Why is this so important?

- ❑ Without an *enforceable* termination provision, an employee will be entitled to “common law reasonable notice” upon termination
- ❑ An enforceable termination provision can limit entitlement to employment standards minimums
- ❑ However, courts (*especially in Ontario*) will look for any flaw in termination language to invalidate the provision
- ❑ An issue in one part of a termination provision will likely invalidate the *whole* provision

What's Keeping Employers Up at Night?

Termination Provisions

- Court will not enforce a termination clause unless:
 1. It clearly limits employee's entitlement to something less than common law reasonable notice **AND**
 2. That something is or would be greater than or equal to employment standards minimums in all circumstances
- Common issues with termination provisions include:
 - ☐ No notice for “just cause” termination (*some provinces*)
 - ☐ Does not address statutory severance pay (*Ontario*)
 - ☐ No benefits continuation (*some provinces*)
 - ☐ Limits statutory termination pay to base salary not “wages”

What's Keeping Employers Up at Night?

Termination Provisions

■ *Dufault v Ignace (Township)*, 2024 ONSC 1029

- ❑ This decision has kept employers (*and their lawyers*) up at night since February 2024
- ❑ Lower court held termination language which stated the employer had “sole discretion” to terminate employment “at any time” was *unenforceable*
- ❑ Court of Appeal for Ontario heard the appeal, but did not address whether this language was unenforceable
- ❑ For the past year, employers have been in limbo

What's Keeping Employers Up at Night?

Termination Provisions

Courts have been grappling with *Dufault*

❑ *Baker v Van Dolder's Home Team Inc.*, 2025 ONSC 952

- Clause which said employer was entitled to terminate employment “at any time” was found *unenforceable*
- Court followed, **and went further than**, *Dufault*

❑ *Li v Wayfair Canada ULC.*, 2025 ONSC 2959

- Clause which said employer could terminate employment “at any time” and “for any reason” was found *enforceable*
- Court distinguished *Dufault* and *Baker*

❑ In January 2026, the Court of Appeal for Ontario will hear appeals from *Baker* and *Li*

What's Keeping Employers Up at Night?

Termination Provisions

It is possible to draft an enforceable termination provision!

- ❑ *Bertsch v Datastealth Inc.*, 2025 ONCA 379
- ❑ Superior Court and Court of Appeal agreed termination provision enforceable (*provision was drafted by Sherrard Kuzz LLP!*)
- ❑ Employee's termination entitlements were limited to employment standards minimums
 - Employee had sought 12 months' pay in lieu of notice; employment standards required only 1 weeks' pay

What's Keeping Employers Up at Night?

Termination Provisions

Termination provisions have been subject to less scrutiny in other jurisdictions

❑ ***Egan v Harbour Air Seaplanes LLP, 2024 BCCA 222***

- Court held parties' intention was to limit entitlements to statutory minimums
- Court held termination provision was not ambiguous and complied with the *Canada Labour Code* ("CLC")

What's Keeping Employers Up at Night?

U.S. Tariffs

Temporary layoff:

- ❑ Employment standards legislation across the country permits a temporary layoff (duration depends on jurisdiction)
- ❑ However, even a “temporary” layoff can be a “constructive dismissal” at common law
 - Unless the employment agreement includes an express or implied right to temporary layoff (or the employee consents)
- ❑ Temporary layoff is deemed a termination once a certain period passes
 - In Ontario and British Columbia, it can be as short as 13 weeks in 20 consecutive weeks
 - In Saskatchewan, it can be as short as 7 days

What's Keeping Employers Up at Night?

U.S. Tariffs

Work-sharing program:

- ☐ Service Canada program to help an employer avoid layoffs
- ☐ An employer and its employees agree employees will work a temporarily reduced work week
- ☐ Program provides Employment Insurance (EI) benefits to eligible employees whose income is reduced
- ☐ Program has introduced special measures to assist employers to respond to U.S. tariffs

What's Keeping Employers Up at Night?

U.S. Tariffs

- **Work-Sharing Program Example:** Employee makes \$25/h and works 5 days/week for 8 hours/day. Employer implements a Work-Sharing Agreement, such that all employees work 4 days/week:
 - ❑ Normal Week: \$25 x 40 hours = **normal pay \$1,000**
 - ❑ Work-Sharing Week:
 - \$25 x 32 hours = **\$800 of pay from the employer** plus **\$110 from EI** (\$200 daily pay x 55% EI rate)
 - ❑ Employee's take home pay under work-sharing: **\$910** for 4 days worked

What's Keeping Employers Up at Night?

U.S. Tariffs

Work-Sharing Program U.S. Tariff Special Measures

- In effect **March 7th, 2025 to March 6th, 2026**
- Employer eligible if “**experiencing a decline in business activity attributable to the threat or potential realization of U.S. tariffs**”
 - Expanded employer eligibility
 - Expanded flexibility

What's Keeping Employers Up at Night?

U.S. Tariffs

	General Program	Special Measures
Length of Agreement	<ul style="list-style-type: none">• 6-26 weeks (+ 12-week extension)• Mandatory cooling-off period	<ul style="list-style-type: none">• 6-76 weeks• No cooling-off period
Reduction	<ul style="list-style-type: none">• 10-60%	<ul style="list-style-type: none">• Can exceed 60% reduction
Employer Eligibility	<ul style="list-style-type: none">• Operated in Canada for 2+ years• Must be a year-round employer• Many non-profit/charitable organizations excluded• Must experience 10% decrease in past 6 months	<ul style="list-style-type: none">• Operated in Canada for 1+ years• Can be cyclical employer• Expanded eligibility for non-profit/charitable organizations• Need not experience 10% decrease in past 6 months
Employee Eligibility	<ul style="list-style-type: none">• Employees must be year-round permanent employees• Employees cannot be essential to the recovery of the business	<ul style="list-style-type: none">• Can include seasonal and cyclical employees• Can include employees essential to recovery

What's Keeping Employers Up at Night?

U.S. Tariffs

Mass termination provisions

- ❑ Exceeding mass termination threshold increases employees' employment standards entitlements upon termination
 - Generally, 50 or more employees over a certain period
 - 10+ employees in Saskatchewan, Quebec, New Brunswick, Nova Scotia (*See chart on the next slide*)
 - For example, in Ontario:
 - ❑ 50-199 employees: 8 weeks' notice
 - ❑ 200-499 employees: 12 weeks' notice
 - ❑ 500+ employees: 16 weeks' notice
- ❑ Notice requirements to government (important to do right!)
- ❑ **Doing this wrong is very expensive – seek legal advice!**

What's Keeping Employers Up at Night?

U.S. Tariffs

Jurisdiction	Group Termination Threshold
Federal jurisdiction	<u>50</u> or more employees in an industrial establishment in a 4-week period
British Columbia	<u>50</u> or more employees at a single location in a 2-month period
Alberta	<u>50</u> or more employees at a single location in a 4-week period
Saskatchewan	<u>10</u> or more employees in a workplace in a 4-week period
Manitoba	<u>50</u> or more employees in a 4-week period
Ontario	<u>50</u> or more employees at an establishment in a 4-week period
Québec	<u>10</u> or more employees at the same establishment in a 2-month period
New Brunswick	<u>10</u> or more employees in a 4-week period
Nova Scotia	<u>10</u> or more employees within in a 4-week period
Prince Edward Island	N/A
Newfoundland and Labrador	<u>50</u> or more employees in a 4-week period

What's Keeping Employers Up at Night?

U.S. Tariffs

Strategies to consider (with legal advice)

- ☐ Working notice
- ☐ Timing of layoffs/terminations
- ☐ Offer of reasonable alternative employment
- ☐ Service Canada Work-Sharing Program

What's Keeping Employers Up at Night?

AI in the Workplace

- AI has benefits and risks
- No guarantee an AI-generated result will be accurate or factual
- Why?
 - AI predicts based on the information it has
 - If that information is incomplete, inaccurate, or biased (for example), so too will be the AI-generated result
- Tread very carefully...

What's Keeping Employers Up at Night?

AI in the Workplace

AI use in recruitment and selection

- ☐ Can reduce time and administrative burden
- ☐ May have bias and impact fairness
 - Consider employer's human rights obligations
e.g., AI may perpetuate gender bias
 - “Human in the loop” and audit for fairness
- ☐ Consider notifying candidates of AI usage in job posting
 - This will soon be an explicit requirement in Ontario
 - British Columbia, Alberta, Quebec and the federal sector have privacy legislation which applies to the employment relationship

What's Keeping Employers Up at Night?

AI in the Workplace

Employee use of AI on the job

- ❑ Can assist employee efficiency and performance
- ❑ If used improperly, can put the employer at risk
 - Poor work product, AI “hallucinations” and reputational risk
 - Disclosure of confidential business information
 - Non-compliance with privacy obligations re client information
 - Inadvertent use of company information for “training” AI
- ❑ To mitigate against risk, have workplace AI policy and provide employee training

What's Keeping Employers Up at Night?

AI in the Workplace

Content of an AI policy, consider (for example):

- ☐ Why the policy exists and whom it applies to
- ☐ Definitions and what AI tools are included
- ☐ Approved vs prohibited uses
- ☐ Protection of company and client confidential information
- ☐ Employee responsibilities (*e.g.*, verifying accuracy, maintaining original source material, avoiding plagiarism)
- ☐ Mandatory disclosure of AI use
- ☐ Training requirements
- ☐ Monitoring and enforcement

What's Keeping Employers Up at Night?

AI in the Workplace

AI use in employee monitoring

- ☐ **Union environment:** arbitral recognition of employee privacy rights – will look at reasonableness/proportionality
- ☐ **Non-union environment:** statutory privacy rights in some jurisdictions (British Columbia, Alberta, Quebec, Federal)
 - In other provinces, no specific protections re employee monitoring (in Ontario, monitoring must be disclosed via policy)

AI considerations re evidence in employee discipline

- ☐ AI can be used to create “deepfakes”
- ☐ Exercise caution when relying on images in an investigation or to support discipline

What's Keeping Employers Up at Night?

AI in the Workplace

■ Which of these pictures is AI?



What's Keeping Employers Up at Night?

AI in the Workplace

- University of Waterloo study found participants were duped by AI generated images nearly 40% of the time
- **How can you identify an AI image?**
 - ❑ **Hands and fingers:** AI still struggles with this
 - ❑ **Textures:** of skin, hair, clothing
 - ❑ **Face symmetry:** real faces are rarely perfectly symmetrical
 - ❑ **Eyes:** looking in different directions, reflections don't match the scene
 - ❑ **Background:** check text and logos, look for artifacts that don't fit
 - ❑ **Lighting:** AI often gets shadows and highlights wrong
 - ❑ **Metadata or tools:** AI images may not have camera data; AI detection tools can check for AI use

What's Keeping Employers Up at Night?

Return-to-Office Mandates

Many misconceptions about an employer's right to require employees at the workplace...

- **Employer has right to determine location of work, unless:**
 - Employment agreement or collective agreement provides for work-from-home (“WFH”) (*express or implied*)
 - Valid accommodation request that cannot be otherwise reasonably accommodated (*e.g.*, disability, family status)
 - Employee not entitled to preferred accommodation
 - If employee can be reasonably accommodated without WFH accommodation, no requirement to provide WFH

What's Keeping Employers Up at Night?

Return-to-Office Mandates

Example: *Best practice to address a WFH family status request*

1. Verify request is based on a need and not just a *preference*
2. Request documentation to support existence of need and to assist in designing reasonable accommodation
 - Relationship between employee and family member to whom employee has caregiving needs
 - Any particular caregiving needs of the family member (e.g., special medical needs)
 - Need of employee to personally provide caregiving
 - Efforts made to seek reasonable alternative to provide for those needs (e.g., daycare waitlists, home care options for elder care, family and community support)

What's Keeping Employers Up at Night?

Return-to-Office Mandates

3. If need substantiated, go through collaborative process of determining a reasonable accommodation
 - Do not need to provide preferred or perfect accommodation
 - Can consider solutions other than WFH, such as:
 - ☐ Flexible start/end times, or “core hours” for in-office days
 - ☐ Flexible dates for in-office days
 - ☐ Flexibility in on-site location (if there are multiple work sites)
 - ☐ Short-term WFH while employee seeks alternatives
4. Once accommodation in place, continue to follow-up to manage accommodation and validate existence of continued need

Heading into 2026...



Heading into 2026

Pay Transparency

- Many provinces have pay transparency legislation (Nova Scotia, PEI, Newfoundland and Labrador, BC and now Ontario)

- **Under the BC *Pay Transparency Act*** an employer is required to prepare and post an annual pay transparency report:
 - ❑ In 2024, employers with 1,000+ employees in BC
 - ❑ In 2025, 300+ employees in BC
 - ❑ **In 2026, 50+ employees in BC**

Heading into 2026

Pay Transparency

Ontario's job posting rules come in force January 1, 2026

- Apply to a “publicly advertised job posting” if employer employs 25+ employees in Ontario
- Employer required to:
 - ☐ Provide expected compensation (range cannot exceed \$50k)
 - Don't need to provide if expected compensation exceeds \$200k
 - ☐ Disclose whether
 - AI is used to screen, assess or select applicants
 - The posting is for an existing vacancy
 - ☐ Inform interviewed applicant whether hiring decision made
- Cannot require Canadian experience

Heading into 2026

Minimum Wage

Jurisdiction	General Minimum Wage per Hour
Canada (Federal)	\$17.75 (April 1, 2025)
British Columbia	\$17.85 (June 1, 2025)
Alberta	\$15.00 (October 1, 2018)
Saskatchewan	\$15.35 (October 1, 2025)
Manitoba	\$16.00 (October 1, 2025)
Ontario	\$17.60 (October 1, 2025)
Quebec	\$16.10 (May 1, 2025)
New Brunswick	\$15.65 (April 1, 2025)
Nova Scotia	\$16.50 (October 1, 2025)
Prince Edward Island	\$16.50 (October 1, 2025)
Newfoundland and Labrador	\$16.50 (April 1, 2025)

Heading into 2026

New Statutory Leaves – Serious Illness or Injury

Many provinces have introduced new or extended unpaid serious illness or injury leave to align with EI benefits

- Leaves provide up to 27 weeks in a 52-week period
 - ❑ **British Columbia:** Leave proposed in Bill 30
 - ❑ **Saskatchewan:** Leave will be increased as of Jan 1, 2026
 - ❑ **Manitoba:** Leave increased as of Nov 2024
 - ❑ **Quebec:** Leave in force since 2022
 - ❑ **Ontario:** New leave in force as of June 2025
 - ❑ **Nova Scotia:** New leave in force as of Jan 2025
 - ❑ **PEI:** Leave passed on Nov 29, 2024, but not yet declared in force
 - ❑ **Newfoundland and Labrador:** Leave in force as of Dec 2024

Heading into 2026

New Statutory Leaves – Serious Illness or Injury

Ontario's long-term illness leave

- ☐ To be eligible for the leave:
 - A “qualified health practitioner” must issue a certificate stating:
 - ☐ The employee has a serious medical condition
 - ☐ The period the employee will not be working due to the condition
 - The employee must have been employed by the employer for at least 13 consecutive weeks
- ☐ Employee must inform employer of need for leave in writing
- ☐ Leave can last up to 27 weeks in a 52-week period
 - Weeks do not have to be taken consecutively
 - If employee takes part of a week off work, may be considered to have used a full week of entitlement

Heading into 2026

New Statutory Leaves – Interpersonal Violence

- **Saskatchewan** currently provides 10 days leave (5 of which are paid). As of **January 1, 2026**, new additional 16 weeks of unpaid leave, to be taken in one continuous period within a 52-week period.
- Most Canadian jurisdictions now offer a combination of unpaid and paid leave days
 - *E.g.*, Ontario: 5 paid days, 5 unpaid days and 15 unpaid weeks
- Employer can request reasonable evidence to verify the need for the leave
 - *E.g.*, a note from a shelter worker, counsellor or police

Heading into 2026

New Statutory Leaves – Maternity/Parental

- **Saskatchewan:** As of January 1, 2026, an employee who experiences a pregnancy loss can access maternity leave if the pregnancy loss occurs up to 20 weeks before the due date
 - ❑ Currently 13 weeks
- **Ontario:** Proposed placement of a child leave will provide up to 16 weeks leave because of the arrival of a child into the employee's custody, care and control through adoption or surrogacy
 - ❑ Leave has not yet been declared into force

Heading into 2026

New Statutory Leaves – Other Leaves

■ **Saskatchewan – Bereavement leave**

- ❑ Can now be used within 6 months after the loss of a pregnancy

■ **Ontario – Job seeking leave**

- ❑ If employee terminated as part of a “mass termination,” can access up to 3 days of unpaid leave during ESA notice period

■ **Quebec – Public health leave**

- ❑ Available for public health order or disaster

■ **Nova Scotia – Sick leave**

- ❑ 5 days unpaid per year

Heading into 2026

Restrictions on “Sick Notes”

Provinces introducing restrictions on “sick notes” for short-term sick leave

- ☐ **British Columbia:** Employer cannot require sick note for short-term absence from work due to illness or injury
- ☐ **Saskatchewan:** Employer cannot ask for a sick note unless the employee has been absent for greater than 5 consecutive working days or has been absent twice for 2+ days in the past 12 months
- ☐ **Ontario:** Employer cannot require sick note for ESA sick leave
- ☐ **Quebec:** Employer cannot request a sick note for the first 3 periods of absence of 3 consecutive days or fewer
- ☐ **Newfoundland and Labrador:** Repealed requirement for employee to provide sick note after 3 consecutive days of leave

Heading into 2026

Increased Fines – Ontario

■ *Working for Workers Seven Act:*

- ❑ *Occupational Health and Safety Act (“OHSA”)* administrative penalty scheme (*amount to be set out by regulation*)
- ❑ *Workplace Safety and Insurance Act (“WSIA”)* administrative penalty scheme for an employer that makes a false or misleading statement re a person’s claim for benefits
- ❑ Increased max penalty of \$750,000 under WSIA if employer convicted of 2+ counts of the same offence in same proceeding

■ *Working for Workers Six Act:*

- ❑ Mandatory minimum fine of \$500,000 for a corporation guilty of a second or subsequent OHSA offence that results in the death or serious injury of a worker in a 2-year period

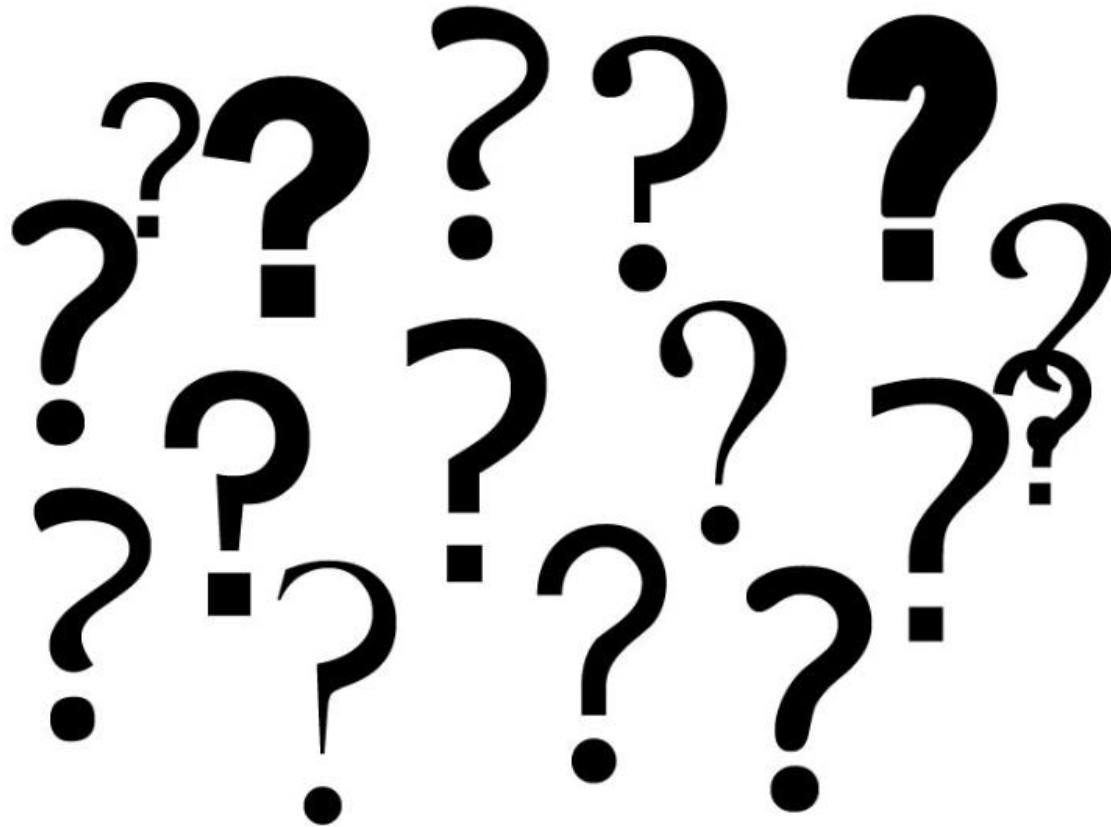
Heading into 2026

Labour Mobility

Federal and provincial governments working together to increase labour mobility

- ❑ *Free Trade and Labour Mobility in Canada Act* passed June 2025
 - Provincial certifications will apply to federal work authorization
- ❑ Provincial governments taking steps to increase labour mobility:
 - **Ontario:** Effective January 1, 2026, most regulated professionals licensed elsewhere in Canada able to work in Ontario within 10 days
 - **Quebec:** Bill 112 received royal assent October 2025
 - **New Brunswick:** Bill 14 received royal assent June 2025
 - **Nova Scotia:** Bill 36 received royal assent March 2025
 - **PEI:** Bill 15 received royal assent May 2025

Questions?





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