

Employment 2026

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Canada: Law and Practice

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Fasken





Law and Practice

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Fasken has one of Canada's largest national practices, comprising more than 120 lawyers, and offices in each of the major cities across the country – Vancouver, Calgary, Toronto, Ottawa, Montreal and Quebec City – and a growing practice with employment specialists in Johannesburg, South Africa, supported by a network of international contacts. Fasken lawyers advise on all areas of labour, employment, pensions and benefits, human rights, privacy and immigration.

Fasken has a long history of representing employers in all aspects of labour law. This service includes offering strategic and tactical advice as well as representing employers before arbitration boards, provincial labour boards, the Canada Industrial Relations Board, various other administrative tribunals and all levels of court in each of the provinces and countries in which the firm operates.

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1. Employment Terms

1.1 Employee Status

Canada is a federal jurisdiction in which the provinces have principal authority over labour and employment matters. However, the federal government has exclusive authority over labour and employment matters in certain important areas, including banking, the postal service, interprovincial transportation, telecommunications and various other sectors that make up part of Canada's national infrastructure.

Labour and employment legislation across Canada does not generally differentiate between blue- and white-collar workers. However, separate requirements or exemptions in respect of matters such as minimum wages, eligibility for overtime, and maximum hours of work are often established for different types of work, including in relation to specific industries or for specific types of employees.

By way of example, in most jurisdictions, supervisory and managerial personnel are exempt from the payment of overtime. Other groups are also excluded from overtime pay provisions in most jurisdictions, including professionals (lawyers, doctors, engineers, etc), domestic workers, teachers, police and IT professionals. Similarly, supervisory and managerial personnel and specified groups are also excluded from maximum hours of work provisions.

In addition, regulations in each jurisdiction establish exceptions to the maximum hours that can be worked in specific industries (eg, tourism).

1.2 Employment Contracts

Definite and Indefinite Contracts

Contracts of employment may be for a definite or indefinite term.

Employees hired on a definite, or fixed-term, employment basis are hired for a specific period of time. In such employment relationships, there is no intent to create an ongoing employment relationship.

The requirement to provide notice of termination, discussed later in this section, may be avoided in certain circumstances by hiring on a definite-term basis if the

term is well defined. An employee hired on a definite-term contract is entitled to be employed for the entire term of the contract unless the contract is terminated for cause or is rendered impossible to perform. As a result (and in the absence of an enforceable clause providing the option to terminate the contract early), if a definite-term employee's employment is terminated before the expiry of the term, the employee will likely be entitled to damages equivalent to the amount the employee was entitled to earn during the remainder of the contract.

By contrast, employees hired on an indefinite basis can generally only be terminated with reasonable notice of termination – or pay in lieu thereof – where the termination is without just cause.

Courts in Canada have found that a series of definite-term contracts leads to a conclusion that the employment relationship has become indefinite. Accordingly, a series of renewals of definite-term contracts will likely be overlooked by courts and not relieve an employer's obligation to provide reasonable notice of termination.

Formal Requirements and Terms

Contracts of employment may be oral or written or a combination of both. Increasingly, employers enter into written employment contracts with non-unionised employees to set out the terms and conditions of the employment relationship. Written employment contracts are especially common between employers and senior, managerial or key employees and where employees are hired for a particular term or to perform a particular task.

There are no specific terms that must be included in a contract of employment. However, any terms set out in the contract must respect the minimum standards set out in the employment standards legislation that has been enacted in each Canadian jurisdiction. Employment standards legislation applies whether or not an employer and employee have set out the terms of their relationship in a contract. However, employment standards are only minimum standards; employers and employees are not prohibited from agreeing to greater rights or benefits in employment contracts.

Express terms set out in written employment contracts typically relate to salary, benefits, vacation entitlement, hours of work, title, job duties, and termination of employment.

Termination

Importantly, unlike the USA, Canada does not allow for “at will” employment. Unless there is an express term providing otherwise, it is an implied term of every employment relationship that the relationship can only be terminated with reasonable notice of termination – or pay in lieu thereof – where the termination is without just cause. Reasonable notice of termination can be significant, particularly for employees in senior positions, older employees, and those with lengthy service with the employer. As a result, employers often use termination clauses in employment contracts to limit the amount of reasonable notice to be provided upon termination. Such clauses are subject to strict analysis in some jurisdictions, whereas courts are not bound by them in others.

To be enforceable, employment contracts must be agreed to at the time of hire. If an employment contract is signed or amended once employment has begun, fresh consideration would be required for the contract to be valid.

1.3 Working Hours

Most jurisdictions limit the number of hours that can be worked in a week. Meal breaks and other shorter breaks during the working day are also typically required by legislation. In most cases, an employee is entitled to an unpaid meal break of at least 30 minutes after having worked five consecutive hours. If an employee is required to remain at their workstation or otherwise be available for work during a break, the employer will be required to pay the employee for the break time. Employment standards legislation also often requires additional rest periods during the work day once an employee has worked a certain number of consecutive hours.

Generally, the same laws apply to employees who perform full-time work and those who perform part-time work. There are no specific terms required for part-time employment contracts.

Employment standards legislation provides for overtime pay once a specific number of hours are worked in a week. In most jurisdictions, overtime is triggered at 40 hours a week and is paid at one-and-a-half times the employee’s regular rate of pay. In Alberta, New Brunswick, Prince Edward Island, and Ontario, overtime begins at 44 hours a week; however, it begins at 48 hours a week in Nova Scotia. Some categories of employees can be excluded from the application of overtime rules – for example, managerial personnel or, in Quebec, employees paid on a basis other than an hourly one.

In some circumstances, the applicable legislation allows employers and employees to enter into “averaging” agreements that allow for hours of work to be averaged over a period of several weeks for the purpose of determining entitlement to overtime pay.

1.4 Compensation

Each jurisdiction in Canada, including the federal jurisdiction, has enacted legislation providing for a minimum wage for most full-time, part-time, and casual employees. The minimum wage is typically adjusted by regulation on an annual basis. If a provincial minimum wage rate exceeds the federal wage rate, employers must pay the higher of the two.

In addition to providing employees with their base wage or salary, employers in Canada often provide end-of-year bonuses to employees or offer employees the opportunity to earn performance-related pay to motivate productivity. Grants of shares, stock options and profit-sharing programmes are also common for executive-level employees.

Employers may be liable to provide payment on account of any bonus, performance-related pay, or other perquisite that an employee would have received had they continued to be employed during either the statutory or reasonable notice period (see **7.2 Notice Periods**). Courts will consider whether the applicable perquisite formed part of the employee’s compensation package or was simply provided at the employer’s discretion on occasion. Carefully drafted employment contracts and policies may serve to limit such payments during any reasonable notice period, so long as statutory requirements are met. Such terms are

typically included in executive employment contracts where perquisites may be a significant component of the executive's compensation.

Executive Compensation

Beyond minimum wages, some jurisdictions have enacted legislation regulating executive compensation in the public sector. That legislation typically prescribes requirements for public disclosure, caps on salary and performance-related pay, signing bonuses, severance payments, etc.

By contrast, executive compensation in the private sector is not specifically regulated by employment law. However, certain corporate, securities and tax laws governing compensation (particularly where compensation includes grants of shares and options) as well as board requirements and shareholder approvals may be triggered and must be considered when determining the compensation of executives.

Equal Pay

Various federal and provincial governments have enacted pay equity legislation to achieve equal pay for work of equal value. Federally regulated public and private sector employers with ten or more employees must develop a pay equity plan to address gender-based pay inequities as of September 2024. Provincially, pay equity is legally required in separate pay equity legislation for the public sector in Manitoba, Nova Scotia, New Brunswick and Prince Edward Island and for the public and certain private sectors in Quebec and Ontario.

With effect from 20 October 2026, Bill C-86 amends the Canada Labour Code to prohibit employers from paying different wage rates to employees based on employment status where those employees perform substantially the same kind of work; apply substantially the same skill, effort and responsibility; work under similar working condition; and work in the same establishment.

1.5 Other Employment Terms

Vacation and Vacation Pay

In each Canadian jurisdiction, employees are entitled to paid vacation. Most often, employees are initially entitled to a minimum of two weeks of paid vacation

per year. However, employers commonly provide their employees with a total of three to four weeks' paid vacation per year. Many jurisdictions have tiered vacation allotments, whereby employees with three or more years of service can be entitled to three weeks of vacation.

Furthermore, many jurisdictions entitle employees to vacation pay dependent on length of service and usually equal to a percentage of accumulated wages earned per year, such as 4% to 6% for Ontario, British Columbia, and Quebec.

In addition, public holidays are also prescribed by federal, provincial and territorial employment standards legislation. Employees are generally entitled to take public holidays off with regular pay. However, employees can agree to work on a public holiday and will normally be entitled to receive a day off in lieu of the public holiday or be paid at a premium rate for hours worked that day.

The Canada Labour Code was amended to add a tenth paid holiday, designated as the National Day for Truth and Reconciliation, starting in 2021 for employees in the federally regulated sector. Shortly after the federal government created this paid holiday, British Columbia, Prince Edward Island, Manitoba, Yukon and the Northwest Territories followed suit in recognising the National Day for Truth and Reconciliation as a paid holiday provincially.

Required Leaves

Employment standards legislation in each jurisdiction establishes various leaves of absence during which employees' jobs must be protected. Common to most jurisdictions are maternity, parental, adoptive, bereavement and sick leave. Some jurisdictions also provide for reservist leave, jury duty leave, organ donation leave, family obligations leave, emergency personal leave and family care-giver leave for seriously ill family members.

Following a protected leave of absence, the employer is generally required to return the employee to the position that they held at the start of the protected leave, or to a comparable position if the original position no longer exists. The timing, duration, qualifying periods

of employment, proof and notification requirements, as well as rules regarding the employer's obligation to continue benefit-plan contributions applicable for the above-mentioned leaves vary by jurisdiction.

As a general rule, employment standards statutes do not require paid leaves of absence. However, amendments to the federal Canada Labour Code, the Prince Edward Island Employment Standards Act, the Ontario Employment Standards Act, 2000, and the British Columbia Employment Standards Act have created exceptions to this general rule. Other government-provided payments may, however, be available to those on leaves of absence. By way of example, unemployment insurance benefits are provided to those on maternity and parental leave and – in prescribed circumstances – for those on sick leave. Further, where an absence from work is the result of a work-related illness or injury, compensation may be available under the statutory workers' compensation regime administered by each province. However, many employers provide paid leave for periods of certain leaves as part of their benefits programmes or compensation packages – for example, paid maternity or parental leave is common.

In some circumstances, employers could be obliged to provide a longer period of leave than required by statute in order to meet the duty to accommodate imposed by human rights law.

Limits on Confidentiality

At both common law and civil law, employees have an obligation to maintain the confidentiality of the employer's proprietary information and not to disclose or make use of such information for personal advantage. Employment contracts are frequently used to specifically reinforce this obligation. Confidentiality clauses that limit the use and disclosure of non-public, proprietary information about the employer's business, both during and following the end of the employment relationship, are generally enforceable.

Canadian employers are also increasingly beginning to insert non-disparagement clauses in separation agreements with departing employees. These clauses prohibit the former employee from making comments or statements that negatively impact the for-

mer employer's reputation, business, management, products, services and/or clients. Non-disparagement clauses that are clearly drafted are generally enforceable.

Employee Liability

Generally, employees will not be found personally liable when acting in the course of their employment within the scope of their authority. Rather, an employer will often be found to be vicariously liable for harm caused to third parties by actions committed by employees in the course of discharging their employment duties, even if an employer has not been negligent or committed other faults.

Canadian courts have identified policy reasons for placing fault and liability on employers rather than employees in such instances, including the employer's power to direct and control its employees, the employer's role in creating the risk of harm to others by creating the circumstances in which the harm occurred, and the employer's ability to pay the harmed third party. However, an employee may be held liable – without incurring vicarious liability for an employer – for actions causing harm to third parties that are not sufficiently connected to their employment or are committed outside of discharging employment duties.

There are instances in which an employee may nevertheless be held personally accountable for their actions that cause harm during the course of their employment, even if such actions are connected to their employment. By way of example, supervisory employees who fail to discharge their responsibility to take reasonable steps to ensure the safety of workers may be found criminally negligent alongside an employer. Indeed, courts have convicted supervisory employees of criminal negligence for deaths and injuries resulting from non-compliance with workplace safety legislation. Further, where an employee engages in certain illegal conduct in the context of their employment (such as discrimination prohibited by human rights legislation), liability may potentially flow to both the employee and employer.

2. Restrictive Covenants

2.1 Non-Competes

Generally, Canadian employers can restrict an employee's activities during and after employment through clauses that limit an employee's ability to compete with the employer's business. However, Ontario legislation – effective as of October 2021 – has prohibited employers from entering into non-competition clauses with the vast majority of employees, with narrow exceptions in the context of certain sales of business and for certain executive employees.

The prohibition on non-compete clauses may soon become applicable in the federal sector as well. On 6 May 2026, the federal government introduced Bill C-31, Budget 2025 Implementation Act, No 2, which – if passed – would amend the Canada Labour Code to prohibit employers from entering into, enforcing, or requiring compliance with non-compete clauses for most federal sector employees.

During employment, non-competition clauses can prohibit the employee from holding other employment or holding employment that would result in a conflict of interest. Following the end of the employment relationship, employers can seek to restrict a former employee's post-employment activities by limiting or prohibiting competition with the employer's business.

In Canada, courts view restrictive covenants in employment agreements as restraints of trade that are *prima facie* unenforceable. Unless the employer can prove that the non-competition clause is reasonable between the parties and in the public interest, the clause will not be enforced. A non-competition clause will only be enforceable if it is proportional in time, territory and scope to the former employer's legitimate business interest that is in need of protection.

Typically, non-competition clauses are enforceable only where the former employee subject to the clause held an important customer-facing position or otherwise personifies the business. In such cases, courts are willing to recognise that employment by a competitor or the creation of a similar business is likely to unfairly disrupt the former employer's business.

Like all contractual terms, a non-competition clause will only be valid if consideration was provided at the time the covenant was imposed. If imposed at the point of hire, then the offer of employment is sufficient consideration. However, covenants imposed following the start of employment – for example, upon an employee's promotion within the business – require fresh consideration flowing from the employer to the employee in exchange for the employee's commitment.

2.2 Non-Solicits

Employers can restrict a former employee's post-employment activities by limiting or prohibiting the solicitation of the employer's employees or contractors following the end of the employment relationship. Unlike non-competition clauses, courts are more inclined to uphold and enforce non-solicitation clauses – often commenting that such clauses are sufficient in conventional employment situations (ie, where the former employee is not an executive, director, key employee, or fiduciary). Like all restrictive covenants, the scope of the clause must be reasonable. Non-solicitation clauses of limited duration (ie, six months to 12 months) are more likely to be found to be enforceable.

Limitations or prohibitions on the solicitation of a former employer's customers or suppliers are also commonly used to restrict an employee's post-employment activities. As with non-solicitation of employee provisions, any restrictions will only be enforceable if proportional in time and scope to the former employer's legitimate business interest. Non-solicitation clauses of limited duration (six months to 12 months) and applicable to those customers or suppliers with whom the former employee had contact as a result of their employment are more likely to be found to be enforceable.

3. Data Privacy

3.1 Data Privacy Law and Employment

In Canada, the Personal Information Protection and Electronic Documents Act (PIPEDA) governs the collection, use and disclosure of personal information. However, in the employment context, PIPEDA only

applies to federally regulated organisations. PIPEDA requires employers to adhere to the following ten basic principles regarding the collection, use or disclosure of employees' personal information:

- accountability;
- identifying purposes;
- consent;
- limiting collection;
- limiting use, disclosure and retention;
- accuracy;
- safeguards;
- openness;
- individual access; and
- challenging compliance.

Alberta, Quebec, and British Columbia have enacted similar legislation that applies to employees and employers in those provinces. If an individual believes their privacy rights have been violated, a complaint can be filed with the provincial or federal privacy commissioner.

General Principles

In some jurisdictions, the general principles relevant to the application of privacy principles to employees are that the collection, use and disclosure of employee personal information must be for the reasonable purposes of managing, establishing or terminating an employment relationship. Additionally, at the time the information is collected, the employer must give notice to the employees of the purposes for which their personal information is being collected, used or disclosed. If notice is not given, the employer will need to obtain employee consent.

Safeguards and Processes

Safeguards and processes must be put in place by employers to prevent unauthorised access, use or disclosure of employees' personal information. Employers must also have privacy processes and procedures in place. Employees are entitled to request access to the personal information collected by their employer and may correct any inaccuracies therein.

In addition, rules regarding the transfer of data across borders are also included in privacy legislation and must be respected. If employees' personal informa-

tion is to be transferred out of Canada, including to a subsidiary, the same rules of notification and consent apply. In the event of transfers to the USA, any notice given to employees should include a statement that the information may be available to the US government or its agencies in accordance with local laws.

Provincially Regulated Workplaces

For provincially regulated workplaces outside of Alberta, British Columbia, and Quebec, there is no legislation that specifically establishes requirements around employee privacy (except in respect of employees' personal health information). However, Ontario's Employment Standards Act, 2000 requires that employers with 25 or more employees on 1 January of any year have a written policy in place with regard to electronic monitoring of employees by March 1st of that year. Courts and adjudicators in all Canadian jurisdictions are increasingly attentive to privacy-related concerns and have begun using common law principles to hold employers and other parties liable for violations of privacy rights.

4. Foreign Workers

4.1 Limitations on Foreign Workers

In Canada, only Canadian citizens and individuals who meet the immigration requirements for permanent residency may engage in employment as of right. Citizens of other countries must obtain a work permit to work in Canada.

Under Canadian law, if an employee is working without a valid permit or other government authorisation, the employer is deemed to have knowledge that the employee is not permitted to work in Canada. Employers can face fines as well as imprisonment for employing such employees.

4.2 Registration Requirements for Foreign Workers

Obtaining a Work Permit

To obtain a work permit in Canada, a person must have their job offer "confirmed" by a government agency (Employment and Social Development Canada) in the area in which the employer conducts business. Through this process, the employer must dem-

onstrate that it has made reasonable efforts to hire a Canadian, that there were no Canadians available who were qualified to perform the job, and that the effect of allowing the foreign worker to work in Canada will enhance employment opportunities in the country or – at least – will not detract from employment opportunities. Thereafter, an immigration officer may issue a work permit for a specific period of time.

Exemptions

There are a number of exemptions to the requirement for a work permit and special rules applicable to certain industries (eg, agriculture) or particular work positions (eg, live-in care-givers). Exemptions or expedited processes for professionals, senior employees of multinational companies, intercorporate transferees, traders and salespersons are also available. In many circumstances, the Canada–United States–Mexico Agreement (CUSMA) provides for special rules applicable as between Canada, Mexico and the USA.

Others may work in Canada as business visitors if they can demonstrate that their business activities are international in scope and that they are not entering the Canadian labour market. This can be shown if the main source of pay for the work done in Canada originates from outside Canada. Normally, a business visitor will be permitted to work in Canada for six months at a time.

Public Registry for Employers of Foreign Workers

As of December 2020, the government of British Columbia began a public registry of employers who are registered to hire foreign workers. The registry applies to most employers (including individuals) who hire foreign workers, such as those hired under the Seasonal Agriculture Worker Program, the Home Child Care Provider or Home Support Worker pilot, and other programmes that require a Labour Market Impact Assessment. An employer does not need to register if they are an excluded employer – including those who currently employ foreign workers and do not intend to hire more workers – or if they only hire foreign workers under the Provincial Nominee Program or the International Mobility Program. In addition, employers hiring temporary foreign workers as domestic workers (eg, workers who provide services such as childcare, cooking and cleaning in a private home) are required

to register the worker with the government of British Columbia within 30 days of hiring them.

5. New Work

5.1 Mobile Work

In Canada, employees do not have a right to work from home. However, employers are increasingly implementing remote work arrangements in their workplaces – whether fully remote or “hybrid” models. In Canadian jurisdictions where an employee’s home is considered an extension of the workplace, requirements and duties set out in provincial occupational health and safety statutes apply. Furthermore, employers are required to take reasonable steps to prevent workplace bullying and harassment and address such conduct where it occurs “virtually” under applicable human rights and occupational health and safety legislation.

5.2 Sabbaticals

In Canada, employees do not have a legal right to sabbatical leave. However, Canadian employers may choose to provide their employees with sabbatical leave. Depending on the employer’s policy, a sabbatical can either be paid or unpaid. An employer may also implement eligibility requirements in order to take sabbatical leave, such as a certain number of years in service.

5.3 Other New Manifestations

As a direct result of the COVID-19 pandemic, new models of work have increased in prevalence in Canada, including:

- four-day working weeks;
- “hotelling” – a practice associated with telecommuting, whereby telecommuters reserve an office or workstation for their in-office days in lieu of assigning them a permanent work space;
- “flextime” – a type of alternative schedule that gives a worker greater latitude in choosing their particular hours of work or grants the freedom to change work schedules from one week to the next, depending on the employee’s personal needs;
- “compressed work week” – an alternative scheduling method that allows employees to work a

standard working week of their regular hours over a period of fewer than five days in one week or ten days in two weeks;

- “job-sharing” – the practice of having two different employees performing the tasks of one full-time position; and
- minimum in-office days – the practice of mandating specific days (ie, “anchor” days), or a specific number of days, on which employees are required to attend the workplace for in-person meetings and collaboration.

Employees do not have a legal right to these models of work and, even though Canadian employers are looking to implement flexible models of work in the post-pandemic work environment, many employers are requiring employees to return to the workplace on a regular basis.

6. Collective Relations

6.1 Unions

Each jurisdiction in Canada has labour relations legislation that establishes employees’ rights to join a union, engage in a process of collective bargaining and enter into a collective agreement with the employer that defines the terms and conditions of employment in the unionised workplace. Employees’ rights to organise and engage in a process of dialogue with their employer are recognised and protected in both labour relations legislation and the Canadian Charter of Rights and Freedoms, which is a part of the Canadian Constitution.

Unions in Canada acquire bargaining rights most commonly through certification or voluntary recognition. Through certification, a union acquires the right to represent a specific group of employees – a “bargaining unit” – by demonstrating to the governing labour board that it has the support of the majority of employees it seeks to represent. In some jurisdictions, a union may be voluntarily recognised by the employer as representative of the employees. Finally, in exceptional circumstances, a union may be certified as representative of the employees by a labour board as a remedy for an unfair labour practice committed by an employer.

Certification Procedures

Two certification procedures are found in Canadian jurisdictions: “card-check” and “mandatory vote” certification. In card-check jurisdictions, a union that presents a sufficient number of signed membership cards may be certified solely on that basis and without an employee vote. In mandatory vote jurisdictions, unions must present a sufficient number of signed membership cards in order to trigger a secret ballot vote; the union will only be certified if it wins the support of more than 50% of employees who cast ballots. Some jurisdictions combine elements of both certification systems.

Entitlement to Unionise

However, not all employees in Canada are entitled to unionise. Indeed, personnel who exercise managerial or supervisory functions or who are employed in a confidential capacity in matters relating to labour relations (for example, HR professionals) are generally excluded from the protections in labour relations legislation. Additionally, certain sectors or industries (eg, the education sector and the agricultural industry) can have separate labour relations legislation that establishes individualised regimes.

6.2 Employee Representative Bodies

Employee representative bodies, most commonly referred to as employee associations in Canada, are generally not regulated and are generally not afforded the same rights and protections as trade unions across the country. Such associations can be instituted by any person, including an employee or the employer.

Even though an employer has no legal obligation to recognise or engage with an employee association, employers in Canada may choose to do so as a means of involving employees in workplace matters and proactively identifying and resolving worker dissatisfaction. However, the right of certain employees to form or become members of an employee association is protected by legislation.

6.3 Collective Bargaining Agreements

The employer has a duty to bargain in good faith with the union, once it has been certified, to reach a collective agreement. The collective agreement defines the

terms and conditions of employment for the bargaining unit. The collective agreement reached will apply to all employees in the bargaining unit and not only those who showed support for the union during the certification process. The employer is no longer permitted to negotiate or contract directly with employees in the bargaining unit over terms and conditions of employment.

Certain minimum standards are required in collective bargaining agreements in Canada or, in the absence of such a term, are implied at law. By way of example, most Canadian jurisdictions require that a collective bargaining agreement provide for a minimum term of one year – although employers and unions may agree to a lengthier term. The collective bargaining agreement must also provide that no strikes or lockouts will occur during the term. Additionally, collective bargaining agreements across Canada must include a grievance and arbitration procedure for resolving disputes.

Although parties to a collective bargaining agreement may agree to a variety of terms and conditions of employment, the parties cannot contract out of certain protections, including human rights protections and minimum employment standards. Canadian courts have concluded that those laws are necessarily incorporated into each collective bargaining agreement, even if the express terms of the agreement provide otherwise.

Federal Prohibitions on Replacement Workers

On 20 June 2025, the Canada Labour Code and the Canada Industrial Relations Board Regulations 2012 were amended. The amended legislation now prohibits employers from using replacement workers in specific contexts. This includes:

- employees and managers hired after the notice to bargain was given;
- contractors (regardless of hire date), except where the contractors were continuing to do their own work that was substantially similar to work done by striking or locked-out employees before the notice to bargain was given;
- any employee whose normal workplace is a workplace other than that at which the strike or lockout is taking place, including anyone transferred to the

strike or lockout location after the notice to bargain was given; and

- any volunteer, student or member of the public.

The prohibition in this regard is subject to exceptions, which include:

- affording employees the opportunity to work before the strike or lockout or to prevent threats to life, health or safety;
- destruction or serious damage to the employer's property/premises; or
- serious environmental damage affecting the employer's property/premises.

If the employer is prosecuted for and convicted of breaching the above-mentioned prohibitions, they may be fined between CAD1,000 and CAD100,000 per day.

7. Termination

7.1 Grounds for Termination

Individual Termination

In a non-union employment relationship, employers can terminate an employee's employment for just cause on a summary basis or, in most jurisdictions in Canada, without cause upon provision of notice of termination or pay in lieu thereof. Except in some jurisdictions, an employer is generally not required to provide a reason for electing to terminate an employee on a "without cause" basis. By contrast, in a unionised workplace, the collective agreement between the union and the employer will almost always provide that employees can only be terminated upon an assertion of just cause.

An employer must provide notice of termination to the employee in writing. During the statutory notice period, an employer must not reduce an employee's wages or alter any term or condition of employment, including contributions to any existing benefits plan. Employees in Nova Scotia, Quebec and the federal jurisdiction who are non-unionised and are non-managerial may resort to a statutory mechanism to challenge their termination if they have the requisite level of service. There are specific procedures to challenge

a termination in these circumstances and reinstatement upon a finding of unjust termination is a potential remedy.

An employer's failure to adhere to requirements in employment standards legislation may result in the imposition of fines or orders to compensate employees for losses incurred as a result of the employer's contravention.

In most Canadian jurisdictions, employment standards legislation requiring notice – or pay in lieu thereof – is not automatically applicable where an employee has been laid off on a temporary basis. However, once a lay-off surpasses a specified period of time, it will generally be considered a termination and employer obligations regarding notice of termination will apply.

Mass Termination

Mass terminations attract different statutory treatment. Every jurisdiction, except Alberta, has employment standards legislation imposing obligations on employers where the number of employees dismissed at the same time surpasses a prescribed threshold. The minimum number of dismissed employees required to attract the mass termination notice requirements ranges from ten to 50 employees, depending on the jurisdiction.

The required amount of notice in a mass termination is based on the number of terminated employees, rather than the employee's length of service. In a unionised workplace, the collective agreement established through the bargaining process between a union and the employer will almost always provide a protocol governing employer obligations and employee rights where individual or mass lay-offs occur.

7.2 Notice Periods

In circumstances where an employee is dismissed without cause, written notice of termination – or pay in lieu of notice – must be provided by the employer. Although statutory minimum notice requirements vary across jurisdictions, in all cases the notice requirement increases according to an employee's length of service.

The common law – as well as civil law in Quebec – prescribes a supplemental “reasonable” notice period, which is typically well in excess of the statutory notice entitlements required by provincial and federal legislation. What constitutes reasonable notice is determined on a case-by-case basis, having regard to the employee's length of service, age, position, and the availability of similar employment. Common law notice periods typically fall within a general range, depending on the nature of employment and the terminated employee's characteristics. The reasonable notice entitlements for a long-service employee have increased in recent months and can now range upwards of 24–28 months.

In Ontario and at the federal level, employment standards legislation creates an entitlement to severance pay for eligible employees. Severance pay is intended to recognise and reward long-term employees for their years of service. Severance pay is not the same as notice of termination, or pay in lieu thereof, and will be in addition to any notice or pay in lieu thereof to which the employee is entitled.

In Ontario, employment standards legislation provides that an employee who has worked for the employer for five or more years is entitled to severance pay if the employer has a payroll of at least CAD2.5 million or has severed the employment of 50 or more employees within a six-month period owing to a total or partial closure of the business. The amount of severance pay is calculated by multiplying the employee's regular weekly wage by the number of years of employment. The maximum amount of severance pay required to be paid in Ontario is 26 weeks.

Mass Termination

Employers are not required to seek government advice or approval for implementing a dismissal or mass lay-off. However, employment standards legislation in most jurisdictions requires that advance written notice be provided to an applicable government authority prior to implementation of a mass lay-off. Such notice provides the local government with the opportunity to offer employees various forms of support, if warranted.

7.3 Dismissal for (Serious) Cause

At common law (and civil law in Quebec), an employee may only be terminated without notice – or pay in lieu thereof – if just cause (or serious reason) is established. Although there is no definition of “just cause” at common law, or “serious reason” at civil law, courts will generally find just cause where an employee’s misconduct causes a breakdown in the employment relationship and amounts to a repudiation of a fundamental term of the employment contract. Acts of misconduct such as theft, fraud, disobedience and serious breaches of employer rules or policies will often be found to amount to just cause. By contrast, termination for poor performance will rarely amount to just cause.

Determining Just Cause

The determination of whether an employer does in fact have just cause is a fact-based analysis and is determined on a case-by-case basis, having regard to the misconduct at issue as well as to mitigating factors such as lengthy service. Canadian courts require a contextual approach and the application of the principle of “proportionality” in any determination of cause. Courts will generally examine the nature and circumstances of any misconduct to determine whether an effective balance was struck between the severity of the employee’s misconduct and the employer’s imposed sanction of termination. Generally, serious misconduct is required and a single incident of misconduct or mistake will not give rise to cause for termination of employment.

Statutory Mechanisms to Challenge Termination

In addition to civil actions before the courts, employees may resort to statutory mechanisms to challenge an employer’s termination. Statutory claims may be subject to a higher standard for assessing just cause. By way of example, Ontario legislation mandates that an employer must prove “wilful” misconduct, disobedience or neglect of duty that is not trivial and has not been condoned by the employer in order to establish just cause for termination. Such a determination is always dependent on the factual circumstances of the particular case. In most cases, serious and deliberate misconduct is required and carelessness or inadvertent misconduct will not give rise to cause for termination of employment.

Evidence Required for Termination

In virtually all unionised workplaces, employees can only be terminated where just cause exists. A similarly high standard exists for the termination of a non-unionised employee.

In most cases, in order to find that the employer had just cause to terminate the employment relationship, a court will require evidence that an employee was provided with warnings to improve their conduct or performance. Employees must also be provided with a reasonable time to improve and, in some circumstances, assistance from the employer to that end. In the exceptional circumstances of a serious single incident, termination for cause may be upheld without prior warnings.

Courts will also consider whether an employer has investigated the alleged misconduct and provided the employee with an opportunity to explain. Finally, courts will not generally allow an employer to rely on conduct that the employer has previously condoned to establish just cause.

Upon termination for cause, employers should advise employees of the reasons for termination and record those reasons in the termination letter. If challenged, employers will generally be required to prove each reason relied upon before an adjudicator will find just cause for termination. Canadian courts have held that it is an implied term of an employment contract that an employer may terminate an employee for cause without any reasonable notice. As a result, an employer will not be required to provide an employee with reasonable notice of termination or pay in lieu of reasonable notice where the employer asserts just cause for termination.

Civil Actions and Statutory Claims

In most jurisdictions, non-unionised employees may challenge a termination for cause by commencing either a civil action or a claim provided for through a statutory mechanism.

In civil actions, employees will claim that the employer did not have just cause to terminate their employment without notice and, as such, that they were wrongfully dismissed. Employees will seek damages for the

notice that would have been required if the employer had terminated the employee without asserting just cause. The employer bears the onus of proving cause for termination.

By contrast, in a statutory claim, an employee will generally only be entitled to receive their minimum statutory entitlements if just cause is not established. In some jurisdictions, such as Quebec, an employee credited with two years of uninterrupted service could also be reinstated in their employment and compensated for any lost wages if the employer does not meet its burden of proving that the termination was made for just cause.

In unionised workplaces, employees must resort to grievance arbitration. If an employer is unable to establish just cause, the employee will – in most instances – be reinstated and compensated for any lost wages.

7.4 Termination Agreements

It is permissible for employment contracts in Canada to contain express termination clauses that govern the parties' rights and obligations on termination. These clauses may be agreed to either prior to or after the termination of the employment relationship. Contractual termination clauses are legally enforceable so long as the provisions do not violate mandatory statutory minimums, including notice periods or pay in lieu of notice requirements. In this regard, it is of note that the Ontario Court of Appeal has found that an unenforceable "for cause" termination clause that violated the Ontario Employment Standards Act 2000 invalidated the contract, resulting in the awarding of common law damages rather than the limited termination entitlements provided for in the contract.

In Quebec, however, civil law provides that an employee may not renounce in advance their right to obtain an indemnity where insufficient notice of termination is given. Therefore, a court would not be bound by a contractual termination clause that would have been agreed at the beginning of the employment relationship and where – given the nature of the employment, the specific circumstances in which it is carried on and the duration of the period of work – the termination

notice previously agreed upon has become unreasonable.

Full and Final Releases

Contractual termination clauses often include "full and final" releases. Under such a release, an employee relinquishes all legal claims against the employer related to their employment in exchange for some form of consideration from the employer (typically, a defined payment or number of payments). Obtaining a release from an employee upon termination does not guarantee that an employee will not commence a future claim against an employer. Rather, the validity of any release signed by an employee who subsequently commences a wrongful dismissal action (or other claim related to their employment) is a determination to be made by an adjudicator.

A release may specifically limit an employee's entitlement to reasonable notice and expressly set out the required period of notice or payment to be made in lieu thereof. A release will only be found to be enforceable if the employer provides the employee with more than their minimum entitlement under employment standards legislation. As individuals cannot release their statutory rights, it is important that releases are carefully drafted.

7.5 Protected Categories of Employee

Under the criminal laws applicable across all Canadian jurisdictions, it is a criminal offence for an employer to discipline, demote, terminate or adversely affect employment with the intent to:

- compel an employee to abstain from providing information to law enforcement authorities concerning an offence that the employee believes has been or is being committed by the employer; or
- retaliate against an employee for making such a disclosure.

Other specific "whistle-blower" legislation has been introduced to protect public sector employees and those who report corporate breaches of securities laws.

Reprisals

Various laws prohibit employer “reprisals” against an employee for specific reasons, including:

- employee requests for employer compliance with legal obligations;
- the exercise of legal rights in connection with one’s employment;
- the making of complaints to an employer about workplace issues; or
- the reporting of unlawful conduct to law enforcement officials.

By way of example, workplace health and safety legislation prohibits employers from dismissing or disciplining, imposing a penalty upon, or intimidating or coercing an employee because the employee has raised a health and safety concern.

Similarly, human rights legislation prohibits employers from reprisals against an employee for making a human rights complaint, as discussed in **8.2 Anti-Discrimination**. Many large employers in Canada have established confidential hotlines or similar mechanisms that allow an employee to make internal complaints. Employees may also have the option of directing their complaint to a responsible government authority within the particular jurisdiction – many of which have online mechanisms in place to receive complaints.

Furthermore, legislation governing the unionised employment relationship generally protects employees against reprisals for exercising legal rights in connection with a union and collective bargaining. Union officers or representatives (union stewards) enjoy enhanced protections in this respect.

When acting in their official capacity, such representatives are often provided more leeway to refuse to follow management instructions and more leeway to openly oppose management in the course of their duties. However, union representatives are not permitted to make false or malicious statements, or engage in harassing or violent behaviour towards management or other workplace parties.

Workplace Harassment

The Workplace Harassment and Violence Prevention Regulations under the Canada Labour Code require federally regulated employers to develop a prevention policy with regard to workplace violence and harassment, including sexual harassment and sexual violence. This includes an assessment of risk factors, training that will be provided to employees, and resolution processes for employees who witness or experience workplace harassment or violence, among various other requirements. Many provinces require similar workplace policies in accordance with their respective occupational health and safety legislation. Notably, with effect from 1 September 2025, Nova Scotia’s Occupational Health and Safety Act was amended to include employer responsibilities relating to psychological health and safety, in addition to their existing obligations concerning physical health and safety.

In Quebec, employers must protect employees from psychological harassment from “any person” and the legislation specifically outlines what is to be included in workplace policies to prevent and manage situations of psychological harassment and sexual violence. The legislation also grants regulatory power to determine measures to prevent or put a stop to sexual violence and requires mandatory training on sexual violence for arbitrators to whom grievances concerning psychological harassment are referred.

8. Disputes

8.1 Wrongful Dismissal

Where an employee believes that their employer has violated one of the rights described in this chapter, the employee may pursue a statutory or common (or civil) law remedy, depending on the jurisdiction and specific right or entitlement at issue. Arguably the most common type of claim is a civil claim for “wrongful dismissal”, in which the employee alleges that the former employer did not provide sufficient reasonable notice of termination under the common law.

In a civil wrongful dismissal claim, the onus is on the employer to prove cause for termination. It is generally accepted to be a difficult onus to discharge. If the

employer is unable to establish just cause or point to a valid contractual termination clause that specifically limits the employee's entitlements on termination, then the employee's wrongful dismissal claim will succeed.

Where an employee has made a successful wrongful dismissal claim, the courts are required to determine the amount of reasonable notice that the dismissed employee should have received. The list of factors the court will rely upon in making this determination vary, but often include the characteristics of the former employment, the length of service of the employee, the employee's age, and their re-employment prospects when considering the experience, training and qualification of the particular employee.

Awarding Damages

Although there is no cap on damages awarded to successful employees in wrongful dismissal claims, the range of common (or civil) law notice periods is typically between a few weeks and 24 months. Recently, court decisions reveal a growing trend of awarding periods in excess of 24 months, and in the range of 24–28 months in cases involving very long-serving employees or exceptional circumstances where a long notice period is warranted for aggravating reasons.

In determining the quantum of damages to be awarded in a wrongful dismissal claim, Canadian courts primarily focus on lost wages and benefits. The value of damages will reflect the value of the employee's salary, bonus, healthcare benefits and other associated entitlements an employee would have received but for their wrongful termination. The Supreme Court of Canada has clarified that employees may be entitled to a bonus or payment under incentive compensation plans despite no longer being employed and found that clear language is required to oust the common-law presumption that such payments apply during the reasonable notice period.

Additionally, and unlike statutory notice, dismissed employees claiming reasonable notice through a civil action have a "duty to mitigate" the damages resulting from their dismissal by actively searching for new employment. A court will deduct from a damages award any earnings gained through alternative employment subsequent to the wrongful dismissal

and during the reasonable notice period. Where an employee fails to seek alternate employment after their wrongful dismissal, the court may reduce the damages award accordingly.

Damages for emotional distress or punitive damages are rare, but may be awarded where the employer's conduct was of such an egregious or malicious nature that it warrants judicial sanction. However, the Supreme Court of Canada has repeatedly stated that punitive damages should be awarded with restraint.

8.2 Anti-Discrimination

Each jurisdiction in Canada has enacted human rights legislation that protects employees from discrimination on a variety of grounds. Typical protected grounds include race, ancestry, place of origin, colour, ethnic origin, creed/religion, citizenship, sex, sexual orientation, age, record of offences, marital status, family status, and disability. Numerous jurisdictions have human rights legislation that includes protection on the grounds of gender identity and gender expression.

Human rights legislation protects an individual in all aspects of the workplace environment and employment relationship.

In all jurisdictions, human rights legislation permits an employer to use the defence of bona fide occupational requirement. The defence allows an employer to argue that a discriminatory requirement, qualification or factor of employment is reasonable and appropriate, given the nature of the employment or essential duties of the position in question. Whether a specific job requirement constitutes a bona fide occupational requirement is a determination to be made by an adjudicator.

Burden of Proof

The burden of proof rests with an employee to establish, on a balance of probabilities, that an employer discriminated against them on the basis of a protected ground. The employee must show a prima facie case that there is a connection between the negative treatment and a protected ground of discrimination. An employee must only prove that the protected ground was a factor (ie, not that it was the sole or primary factor) in the negative treatment to discharge this burden.

The discharge of the burden possessed by an employee will be impacted by the nature of the discrimination that is claimed. By way of example, when claiming direct (ie, intentional) discrimination, an employee must prove that a protected ground was a factor in an employer adopting a rule or practice. When claiming indirect discrimination (ie, adverse impact discrimination) an employee must prove that a requirement, factor or qualification resulted in an adverse impact on the basis of a protected ground.

If discrimination is proven on a direct or indirect basis, the burden of proof shifts to the employer to defend their conduct based on a statutory exemption or by proving that the negative treatment was not in any way related to a protected ground.

Remedies

The range of remedies available to statutorily enacted employment and human rights tribunals generally tends to be broader than that available in a civil action. As an example, the Ontario Human Rights Tribunal has the ability to award financial compensation, non-financial remedies and public interest remedies. Non-financial remedies may include reinstatement, an offer of employment, a letter of reference as well as a letter of assurance of future compliance with human rights legislation. Public interest remedies are intended to be an educational tool and to prevent similar future discrimination from occurring. Public interest remedies may include ordering an employer to develop non-discriminatory policies and procedures and to implement mandatory education and training programmes in the workplace.

In recent years, some human rights adjudicators have awarded significant damages for violations of human rights ranging between CAD25,000 and CAD40,000. In an exceptional 2021 decision, the British Columbia Human Rights Tribunal awarded significant damages of approximately CAD176,000 for injury to dignity, feelings and self-respect, in addition to more than CAD700,000 in compensation for lost wages. This decision reminds employers of the increasing and significant potential liability for breaches of human rights legislation.

Human rights tribunals generally do not award costs or attorney's fees to the successful party, with many lacking the authority to do so.

8.3 Digitalisation

The Canadian justice system conducts virtual proceedings for hearing matters before the courts and administrative tribunals. Currently, virtual attendance is the default method of attendance in some proceedings, such as case conferences or pre-trial conferences, examinations for discovery, and motions. Trials, both by judge alone and by jury, are generally conducted in-person however. Labour boards in each jurisdiction in Canada (including the Canada Industrial Relations Board) have also embraced virtual proceedings to a degree. However, there is a resumption of in-person proceedings taking hold before the labour boards too, with virtual proceedings being considered by way of special request.

Additionally, the Canadian courts and tribunals are embracing digitalisation of filing court documents, facts, compendiums, affidavits and other materials. The courts are also relying on selected digital platforms to share, view and present these documents in virtual and in-person proceedings.

9. Dispute Resolution

9.1 Litigation

Many employment disputes in Canada are dealt with by the numerous federal and provincial tribunals established to deal with specific employment issues. As an example, human rights complaints initiated by an employee against their employer are typically dealt with by the human rights tribunal or commission in the province where the employment relationship exists. It is possible for an employee or employer to apply to the superior court in each jurisdiction for a judicial review of a tribunal decision.

The provincial superior court in each province also has jurisdiction over wrongful dismissal claims and other employment-related disputes that relate to a breach of a common law (or, in Quebec, civil law) right, such as the requirement to provide reasonable notice of termination.

Class actions in the employment law context are permissible in Canada. Indeed, during the course of the past decade, there has been a significant increase in the use of class actions as a means of reducing the individual costs of employment litigation. Class actions in the employment context have included mass wrongful dismissal claims, retirement benefits claims, employment discrimination claims and – perhaps most frequently – claims related to the breach of employment standards legislation.

Recently, a growing number of wrongful dismissal cases have been decided by way of a summary judgment motion. Those cases have typically involved straightforward facts that were not in dispute and have centred around notice entitlements and the enforceability of termination provisions.

9.2 Alternative Dispute Resolution

In the non-unionised context, Canadian courts are generally willing to uphold the terms of a pre-dispute arbitration agreement. In most cases, a court will engage in a deferential approach to the jurisdiction of arbitrators, including by finding that a challenge to the validity of a pre-dispute arbitration clause should be determined at first instance by the arbitrator. The courts will be more inclined to scrutinise pre-dispute arbitration agreements where there is an obvious inequality in bargaining positions or where the invocation of the arbitration agreement would be oppressive or amount to an illegal contracting out of an employment standard.

In the unionised setting, disputes between a union and the employer are almost always dealt with through arbitration. Collective bargaining agreements typically specify the arbitral procedure to be engaged in between the parties.

9.3 Costs

The general rule across Canada is that the successful party in a civil lawsuit will be entitled to at least a portion of their costs or attorney's fees to compensate for the time and expense of bringing or defending a legal proceeding. It is rare that any successful party, whether an employer or employee, will be entitled to the full amount of legal fees incurred in a proceeding.

Costs awards, which can include both legal fees and general expenses associated with litigation in some jurisdictions, may typically represent between 40% and 50% of the actual amount of money expended by the successful party. However, a greater proportion (or the entirety) of the legal fees may infrequently be awarded in cases where the conduct of the opposing party in the legal proceeding is considered to be egregious or reprehensible.

Some Canadian jurisdictions have special rules regarding costs to encourage settlement between parties. In Ontario, Alberta and British Columbia, if an employee rejects an employer's written offer to settle a wrongful dismissal claim and the employee receives a judgment at trial that is no more favourable than the terms of the employer's rejected offer to settle, the employer may be entitled to recover their legal costs at a significantly higher rate than would typically be awarded.

In contrast, most tribunals that deal with employment matters do not have the authority to award the successful party costs.

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