

JANUARY 2023 MONTH IN REVIEW

British Columbia

LAWS & ANNOUNCEMENTS

Labour Standards

Jan 6: BC completed [online surveying](#) on whether to revise its *Employment Standards Act* to include special protections and benefits for app-based ride hailing, food delivery and other “gig” workers. As a hybrid between employees and independent contractors, gig workers, aka, dependent contractors, fall through the cracks of current ESA laws.

Action Point: Find out about current [employment law protections for gig workers](#)

New Laws

Dec 1: Under BC's new skilled trades certification rules, uncertified workers in 7 trades will have a one-year transition period to get registered as an apprentice or journeyperson. Affected trades: Gasfitter Class A and B; Steamfitter/pipfitter; Refrigeration and air-conditioning mechanic; Sheet-metal worker; Powerline technician; Industrial electrician; and Electrician (construction).

Health & Safety

Jan 1: New age restrictions require workers to be at least 16 for construction, silviculture, forest fighting and work from heights requiring fall protection; 18 is the minimum age for tree felling and logging, chainsaw use, pulp, paper, and other mill work, foundry or metal processing work, powerline construction or maintenance, oil or gas field servicing and drilling, silica processes, fish, meat or poultry facility work, confined space work or work involving exposure to asbestos, radiation or silica and work requiring respirator use.

Action Point: Find out about the [minimum age requirements](#) across Canada

Employment Benefits

Dec 21: The BC Superintendent of Pensions issued a [Guideline](#) explaining what pension plans with target benefit provisions must do to meet new provision for adverse deviation (PfAD) regulatory requirements. The plan's funding policy and actuarial valuation reports with a review date on or after Dec. 31, 2022, must reflect the new PfAD definition, the Superintendent advises.

Workers Comp

Nov 24: BC passed new workers comp reform legislation ([Bill 41](#)) requiring employers to re-employ injured workers. Employers and injured workers must cooperate in return to work and WorkSafeBC can issue Administrative Monetary Penalties against employers for violating their cooperation or return to work duties. The law also bans employers to discourage workers from filing workers comp claims.

Action Point: Find out about your [duty to re-employ](#) injured workers

CASES

COVID-19: CERB Doesn't Count Against Wrongful Dismissal Damages, Says BC Top Court

For the first time, the top court of a province has weighed in on a key question: Should employees who got laid off due to COVID get less in wrongful dismissal damages because they received federal CERB benefits? The case involved a marketing manager who was put on temporary layoff and not recalled before termination became permanent. The lower court ruled she was entitled to 5 months' termination notice but subtracted the \$10,000 she received in CERB. Letting her have both full damages and CERB would be a "windfall," the court reasoned. But the BC Court of Appeal reversed on public policy grounds, finding that CERB payments were intended to be like Employment Insurance protecting employees who lost their jobs as a result of the pandemic [[Yates v. Langley Motor Sport Centre Ltd.](#), 2022 BCCA 398 (CanLII), November 29, 2022].

Action Point: Find out more about the [controversy](#) over CERB and wrongful dismissal damages

Workplace Violence: Employer Fined \$355,000 for Failing to Properly Investigate Violence Incidents

In what may be the biggest fine of its kind, WorkSafeBC hit a health region with a

\$355,244 administrative monetary penalty for failing to properly investigate incidents of workplace violence against a worker. WorkSafeBC inspectors reviewed the investigation reports created in response to several incidents and found that they all lacked key information such as with regard to underlying causes and corrective actions [Northern Health Authority, WorkSafeBC Report, November 10, 2022].

Action Point: Find out about the 10 things you must do to [prevent workplace violence](#)

Off-Duty Conduct: Employer Can Sue Worker to Recover Stolen Money

A security services suspected that one of its employees was involved in recent robberies of ATM machines of client banks resulting in losses that the firm had to repay under its contracts with the banks. So, the firm fired the suspect employee and sued to make him pay back the money. The union cried foul, but the BC labour arbitrator tossed the grievance. The union appealed, contending that the arbitrator was wrong and had no jurisdiction over the case because it wasn't a labour dispute. The court ruled that the arbitrator's decision was reasonable and refused to overturn it [[Unifor, Local Union No. 114 v Brinks Canada Ltd.](#), 2022 BCSC 2061 (CanLII), November 28, 2022].

Action Point: Implement a legally sound [off-duty conduct policy](#) at your workplace