

NOVEMBER 2023 MONTH IN REVIEW

British Columbia

LAWS & ANNOUNCEMENTS

Labour Standards

Nov 28: BC became the second province (after Ontario) to pass legislation ([Bill 48](#)) extending *Employment Standards Act* protections to gig workers. The law specifies that an “online platform worker,” defined as one “who performs prescribed work accepted through an online platform,” such as app-based ride-hailing and food-delivery gig workers, counts as an “employee” entitled to ESA protections.

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

New Laws

Nov 1: New wage transparency legislation took effect in BC. **Result:** Effective today, employers in BC must include wage or salary information in all job postings that they publicly advertise. The law also bans employers from asking job applicants about their pay history or punish employees who discuss how much they make with co-workers and job applicants.

Action Point: Implement a [pay transparency compliance game plan](#) at your workplace

Immigration

Nov 8: Royal Assent for [Bill 38](#) making it easier for foreign trained professionals in 29 different trades to ply their trade in BC by eliminating redundant language testing, setting caps for maximum processing times, requiring credential assessment information to be published online and establishing a new government agency to promote faster and more efficient credentialing.

New Laws

Oct 30: BC will increase the wages for early childhood educators (ECEs) another \$2.00 per hour starting in January 2024. The newest increase is in addition to the previously announced \$4-per-hour raise based on hours worked in December 2023, bringing ECEs median wages up to approximately \$28 per hour.

New Laws

Oct 31: New and small-scale farmers can now [apply](#) for government funding for greenhouses, tractors, irrigation systems and other on-farm infrastructure and equipment projects under the newly relaunched New Entrant Farm Business Accelerator Program. Deadline to apply: November 30, or until the money runs out.

Employment Benefits

Nov 8: Royal Assent for [Bill 33](#) which authorizes BC pension plans to offer what are called variable life benefits (VLBs) designed to keep employees with defined contribution plans from running out of money when they retire. Employees who opt for VLBs will receive lifetime pensions, with payments that go up and down based on federal tax rules.

Health & Safety

Nov 8: [Bill 31](#) reorganizing BC's emergency management system based on the lessons from the recent wildfire, COVID-19 passed the Assembly and received Royal Assent. The *Emergency & Disaster Management Act* addresses all phases of emergency management, including preparation, mitigation, response and recovery, while streamlining the powers and responsibilities of government agencies involved in emergency response.

Drugs & Alcohol

Nov 8: BC passed legislation ([Bill 34](#)) banning drug use in public and recreational spaces, including within: i. a 6-metre radius from the entrances of business and residential buildings; ii. 6 metres of a bus stop; iii. 15 metres of playgrounds, spray and wading pools, and skate parks; and iv. completely at parks, beaches and sports fields. The idea is to align the rules of drug use more closely to those governing alcohol and tobacco.

Action Point: Find out how to [effectively control substance abuse](#) at your workplace

Workers Comp

Nov 10: WorkSafeBC announced that it's keeping the average base premium rate at \$1.55 per \$100 of assessable payroll in 2024. Strong finances and reduced claims costs have enabled the agency to maintain the same average rate without change since 2018.

CASES

Termination: Contract Clause Limiting Notice for Termination Without Cause Is Enforceable

Employers scored a rare victory on a commonly litigated issue when a BC court ruled that a contract clause limiting employee's entitlement for termination without cause to the minimum required by ESA laws was enforceable. Unlike so many others, the court held that the clause in this case was unambiguous and didn't strip the employee of any of his ESA entitlements. The exact language: "The [employer] may terminate your employment at any time without cause so long as it provides appropriate notice and severance in accordance with the requirements of the *Canada Labour Code*" [[Egan v Harbour Air Seaplanes LLP](#), 2023 BCSC 1916 (CanLII), November 1, 2023].

Action Point: Find out why [contract termination notice limits](#) are so hard to enforce

Reasonable Accommodations: Tribunal Nixes Worker's Chemical Allergy Discrimination Complaint

Did the employer do enough to accommodate the employee who was allergic to the chemicals used to clean the workplace? After sorting through the contradicting stories and witness accounts as to what did and didn't happen, the BC Human Rights Tribunal dismissed the employee's disability discrimination complaint, finding that she had no reasonable prospect of success at trial. The evidence suggested that the employer did seek to accommodate her allergy, including by relocating her to a different work area, but the employee insisted it wasn't enough and steadfastly refused to return from disability leave while also not furnishing all the medical information the employer requested to determine her condition and how best to accommodate it [[Smith v. Interior Health Authority](#), 2023 BCHRT 209 (CanLII), November 15, 2023].

Action Point: Help managers avoid [accommodations](#) mistakes that can create discrimination liability