

## OCTOBER 2023 MONTH IN REVIEW

# British Columbia

## LAWS & ANNOUNCEMENTS

### Labour Standards

Sep 30: [Comments](#) ended on an MOL [proposal](#) to add new “gig worker” protections to the BC *Employment Standards Act* covering app-based ride-hailing and food delivery workers, including with regard to fair pay, destination transparency, the termination process and workers comp coverage.

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

### Statutory Holidays

Sep 30: Having passed legislation making the National Day for Truth and Reconciliation, aka, Orange Shirt Day, an official stat holiday earlier this year, BC will now officially observe it as such for the first time.

**Action Point:** Find out more about the [new federal National Day for Truth and Reconciliation stat holiday](#)

### Workplace Harassment

Oct 30: That’s the deadline to comment on [proposed changes](#) to OHS workplace violence and harassment regulations. Highlights:

- New combined definition of violence and harassment as conduct reasonably expected to intimidate, humiliate, offend or cause physical or psychological harm to a worker
- New employer duty to implement a violence and harassment prevention program

- New process to resolve incidents without an investigation when the accused is somebody from within the organization
- New incident investigation requirements.

**Action Point:** Use the HRI [template](#) to create your own workplace harassment and violence policy

## Health & Safety

Sep 18: The federal government will provide \$1.81 million over the next 3 years to help the British Columbia Poultry Association prepare the province's commercial poultry sector for potential future outbreaks of highly pathogenic avian influenza (HPAI).

## Discrimination

Sep 30: [Online surveying](#) on what BC should do to address systemic racism came to an end. The government will use the feedback to identify and create new legislation to deal with the gaps and barriers faced by Indigenous and racialized people in the province.

**Action Point:** Beware of [employment practices](#) that inadvertently perpetuate racial discrimination

## Privacy

Sep 13: A new BC Office of Information and Privacy Commission report finds that the Provincial Health Services Authority has taken "meaningful steps" to bolster the security of the Provincial Public Health Information System (System) used to track the spread of COVID-19 and other infectious diseases.

## Workers Comp

Sep 11: Starting today, BC employers who pay their workers comp fees by cheque must include their e-banking numbers on the cheque. You can find your e-banking number on your Payroll Report or include the payment stub that appears at the bottom of the Payroll Report or payment form.

## Workers Comp

Oct 20: That's the last day to comment on [proposed changes](#) to WorkSafeBC policies

governing when cancer may be considered a “compensable consequence” of a traumatic injury covered by workers comp based on new medical studies about the disease.

## CASES

### **Workplace Harassment: Brief Tap on the Buttocks Leads to Termination, \$25,000 Damage Award**

BC's top court upheld a lower court ruling that an employer had just cause to terminate its head baker for sexually harassing his subordinate. The 60-year-old baker of Korean descent crossed the line by lightly tapping his female assistant in the buttocks to demonstrate the pain he was experiencing in his lower back. And while the contact was brief, it was enough to violate the assistant's bodily integrity and cause her emotional distress. The Court of Appeal also refused to overturn the \$25,000 in aggravated damages that the lower court awarded to compensate the victim for the emotional distress she suffered as a result of the incident [[\*Café La Foret Ltd. v. Cho\*](#), 2023 BCCA 354 (CanLII), September 13, 2023].

**Action Point:** Use the resources on the [Harassment Compliance Centre](#) to prevent harassment and bullying at your workplace

### **Workplace Violence: Hospital's Failure to Protect Doctor from Patient Attack Is Not Negligence**

A psychiatrist who suffered devastating injuries as a result of being attacked by an inpatient at a mental health hospital sued the facility's operator for negligently failing to address the risk of violence by patients citing, among other things, its failure to perform a workplace violence risk assessment. The trial court was unimpressed finding that a hazard assessment wouldn't have made any difference and that the psychiatrist knew the patient was violent and voluntarily assumed the risk by agreeing to meet with him alone. Faulting the hospital for not adopting a policy banning doctors from visiting violent patients without accompaniment would potentially interfere with proper psychiatric care, the court reasoned. The BC Court of Appeal found the lower court's reluctance to author a new standard of care for psychiatric treatment without expert evidence reasonable and refused to overturn it [[\*Sheoran v. Interior Health Authority\*](#), 2023 BCCA 318 (CanLII), August 8, 2023].

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

### **Accommodations: Employee Can Sue Employer for Failing to Accommodate Her Dog Allergy**

All agreed that a pet-friendly office wasn't suitable for the software developer with a physician-certified allergy to dogs. The question thus became how best to accommodate her. The employer offered to let her work from home or out of a separate pet-free office but the programmer rejected the proposal because she didn't want to be separated from her team. Turn the big office into a dog-free facility and limit pets to the smaller office space, she countered. But the employer nixed that idea. The programmer for failure to accommodate. The employer claimed that she had no chance of winning the case and asked the BC Human Rights Tribunal to dismiss it. The Tribunal refused. The question of whether the employer took all reasonable steps necessary to accommodate was no slam dunk and the programmer deserved an opportunity to prove her claims at a hearing [[\*Fenech v. PNI Media Inc. and another\*](#), 2023 BCHRT 120 (CanLII), August 29, 2023]