

SEPTEMBER 2023 MONTH IN REVIEW

British Columbia

LAWS & ANNOUNCEMENTS

COVID-19

Aug 29: BC confirmed that a case of the BA.2.86 variant of the Omicron strain of COVID-19 has been reported in the Fraser Health region in a patient who hasn't travelled outside the province. This is the first reported case of BA.2.86 in Canada.

Labour Standards

Sep 30: That's the deadline [to comment](#) 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](#)

Labour Relations

Aug 11: The Midwives Association of British Columbia ratified a new 3-year collective agreement with the province. The deal, which is effective retroactively from April 20, 2022 until March 2025, includes a year 1 fee-for-service increase of 3.24%, followed by a 6.75% increase in year 2 and a 2% increase in year 3.

Discrimination

Sep 30: [Online surveying](#) on what BC should do to address systemic racism is coming 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

Training

Jul 25: The British Columbia Institute of Technology received a \$3.3 million government grant to create a new hub offering mass-timber skills training.

CASES

Discrimination: Real Estate Agent Can Go Forward with Sexual Orientation Discrimination Claim

A gay senior real estate agent worked hard to keep his sexual orientation and personal life separate, wanting to be judged only by his work ethic and professional accomplishments. The new VP, also gay, allegedly didn't respect this attitude and continually badgered the agent with inappropriate sexual remarks. He also caught flak from another regional director appointed by the VP who, while pronouncing her "love for gay people" and many "gay friends" exhibited an exuberance that made the agent feel uncomfortable. Before getting to the merits, the BC Human Rights Tribunal had to decide whether the agent filed the case on March 15, 2022, had met required 1-year filing deadline. Yes, the Tribunal ruled, but just barely, noting that the last alleged act of discrimination occurred during the exit interview the company held with the agent on March 17, 2021, a narrow margin of 2 days [[The Worker v. The Company and others](#), 2023 BCHRT 85 (CanLII), July 19, 2023].

Action Point: Implement a legally sound sexual orientation and transgender discrimination policy at your workplace

Labour Relations: Union Not Entitled to Detailed Info on Employer's Suppliers

At issue was a provision in a collective agreement requiring a hotel to use only services and products that "are manufactured, provided or produced under fair labour conditions." Rather than citing any particular service or product produced under unfair conditions, the union contended that the hotel violated the spirit of the duty by refusing to provide an itemized list of all its service and product providers along with an explanation of its methods for ensuring they complied with fair labour practices. The BC arbitrator tossed the grievance, noting that the clause didn't say anything about the hotel's having to make detailed disclosures about its suppliers or what process it had to follow to verify their labour practices. The arbitrator's role "is to interpret and apply collective agreement language and not to amend or add

terms," it concluded [[Hyatt Regency Vancouver v Unite Here, Local 40](#), 2023 CanLII 71651 (BC LA), August 2, 2023].

Mental Stress: Inappropriate Sexual Touching Incidents Didn't Cause Nurse's Anxiety

A male resident in a mental health facility grabbed the buttocks of a female aide; later he grabbed her breasts. The aide decided not to report the inappropriate touching incidents because she knew the resident had cognitive and mental health issues. But later, she filed a workers comp claim for the recurrent depression and anxiety she suffered as a result of these and other incidents. The Board ruled that the incidents weren't traumatic events and rejected the claim. The BC court rejected the aide's appeal. While the resident's "reprehensible" conduct might have been enough to cause another worker to suffer anxiety and depression, the evidence suggested that it wasn't a significant stressor to the aide in this case given that she initially "brushed off" the incidents and excused the resident's behaviour as being the product of his mental illness [[De Jesus v British Columbia \(Workers' Compensation Appeal Tribunal\)](#), 2023 BCSC 1320 (CanLII), July 31, 2023].

Action Point: Use the HRI [sexual harassment policy template](#) to review and improve your own policy