

JANUARY 2024 MONTH IN REVIEW

Ontario

LAWS & ANNOUNCEMENTS

Employment Benefits

Jan 19: That's the deadline to participate in FSRA public consultations on [revised Guidance](#) designed to clarify the requirements for making amendments to existing pension plans that take effect retroactively.

Health & Safety

Dec 1: A new WSIB policy took effect listing criteria for determining whether workers comp covers a worker's "communicable illness." For an illness to be deemed work-related, there must be evidence that the worker's employment made a "significant contribution" to their contracting it.

Action Point: Use the HRI template to create your own infectious illness [exposure control plan](#)

New Laws

Dec 5: A sweeping criminal reform law that's working its way through the Ontario Assembly, [Bill 157](#), includes a provision that would allow victims of certain crimes to file lawsuits for money damages compensating them for the emotional distress and bodily harm they suffered as a result of those crimes.

Action Point: Protect your organization from [revenge porn and cyberbullying liability](#)

CASES

Drugs & Alcohol: Vehicle Accident Isn't Just Cause to Drug Test Nuclear Plant Worker

A nuclear power plant demanded a radiation surveyor trainee to undergo post-incident drug and alcohol testing after he drove his pickup truck off the road and into a tile array containing radioactive waste. The trainee agreed but only under protest after predicting he would test positive. And he did. The union claimed the incident wasn't a "significant event" justifying testing under the plant's testing policy. The Ontario arbitrator disagreed. Driving into a nuclear waste pit is a big deal, even if no actual damage was done in this case. However, the arbitrator continued, the plant jumped to the conclusion that the incident demonstrated the trainee's unfitness for duty without performing a proper assessment of fitness required by the testing policy. for duty as the testing policy required. As a result, it concluded that making the trainee undergo post-incident testing was unreasonable and awarded him \$1,000 for the damage done to his privacy and dignity [[Canadian Nuclear Laboratories v United Steelworkers Local 1568](#), 2023 CanLII 121591 (ON LA), December 18, 2023].

Action Point: Find out [how to create a legally sound drug testing policy](#) at your workplace

Termination: Employee Placed on IDEL Can Sue for Constructive Dismissal

During the pandemic, Ontario adopted a regulation allowing employers to put employees on Infectious Disease Emergency Leave (IDEL) without triggering the normal ESA temporary layoff termination notice requirements. The regulation also barred constructive dismissal lawsuits by employees put on IDEL. So, when an employee placed on IDEL during the pandemic sued his employer for constructive dismissal, the company asked the court to toss the case. The court refused. Citing previous rulings, it concluded that the IDEL regulation ban applied only to constructive dismissal suits arising under ESA law without taking away an employee's right to sue for constructive dismissal under "common law," i.e., law derived from court cases rather than the ESA. **Result:** The company did commit constructive dismissal and had to pay the employee \$68,854 in damages [[Webb v. SDT North America](#), 2023 ONSC 7170 (CanLII), December 19, 2023].

Action Point: Find out more about the controversy over [IDEL and constructive dismissal in Ontario](#)

Discrimination: Mention of Employee's Nationality Doesn't Prove Nationality Discrimination

A warehouse probationary employee claimed that he got terminated because he was from Serbia. The warehouse contended he was let go because his skills weren't up to snuff. The Ontario Human Rights Commission sided with the employer. The only evidence of national origin discrimination was a remark by a supervisor of Croatian origin: "So you're from Serbia; that means we're mortal enemies." This remark was "ambiguous" and not clear proof that nationality was a factor in the decision to terminate. Human rights laws protect against actual discrimination, not hurt feelings, the Commission concluded [[*Cavic v. Ringball Corporation*](#), 2023 HRTO 1770 (CanLII), December 7, 2023].

Action Point: Find out about [citizenship discrimination risks and how to avoid them](#)