

## FEBRUARY 2023 MONTH IN REVIEW

# Alberta

### LAWS & ANNOUNCEMENTS

#### Immigration

Jan 18: Changes to the Alberta Advantage Immigration Program (AAIP) will allow immediate relatives of immigrant workers in high-demand sectors who've already been accepted and settled in the province to gain entry via the Express Entry stream.

#### Health & Safety

Dec 9: Alberta reduced the threshold for when employers must perform a workplace noise exposure assessment from 85 decibels (dBA) to 82 dBA, effective March 31. The assessment must also meet the updated version of the CSA standard, CSA Z107.56-18, *Measurement of Noise Exposure*. There are also [technical changes](#) affecting noise dosimetry readings in performing the assessment.

**Action Point:** Get a noise protection [infographic](#) to post at your workplace

#### Workers Comp

Jan 10: The Alberta WCB announced that the 2023 cost of living adjustment amount is 5.48%. There will be no increase to the claims cost threshold, which will remain at \$1,800 in 2023.

#### Workers Comp

Feb 28: That's the deadline for Alberta employers to submit their actual payroll and wages data to the WCB to avoid potential penalties and late fees.

## CASES

### Drugs & Alcohol: Alcohol Odour Is Reasonable Cause to Test Safety-Sensitive Employee

After detecting a very strong smell of “booze,” a thermal energy plant supervisor ordered a safety-sensitive warehouse person to submit to alcohol and drug testing. The test came back non-negative and the employee was fired for violating the company’s alcohol and drug policy. The union objected but the Alberta arbitrator dismissed the grievance, finding that the smell of booze and other signs of impairment were reasonable cause for testing and that the non-negative result for alcohol and high levels of marijuana detected were just cause to terminate [*Transalta Generation Partnership (TAGP) v United Utility Workers' Association of Canada (UUWA)*, 2022 CanLII 122750 (AB GAA), December 12, 2022].

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

### Termination: No Deducting CERB Benefits from Wrongful Dismissal Damages

In the second reported case to address the issue, an Alberta court followed the lead of the BC Court of Appeal in ruling that the CERB benefits a wrongfully terminated employee received don’t count against his wrongful dismissal damages citing “broader policy considerations.” “It seems wrong” for an employer that breaches an employment contract “to enjoy, effectively, a windfall from an income support program designed to benefit workers impacted by the COVID-19 pandemic,” the court reasoned in awarding a heavy-duty mechanic nearly \$150,000—24 months’ notice and vacation [*Oostlander v Cervus Equipment Corporation*, 2023 ABCA 13 (CanLII), January 13, 2023].

### Bullying & Harassment: NFL Fantasy Draft Snub Is Not Bullying

Upon learning that she wasn’t invited to participate in the office NFL fantasy pool, an accountant complained that she was the victim of “bullying by exclusion.” The company later fired her amid concerns of tampering with the production data. She claimed that the real reason for termination was her bullying complaint. The OHS investigator rejected the complaint. The Alberta Labour Relations Board upheld the decision as reasonable and chucked the appeal. Not all interpersonal conflict at work is bullying even if the alleged victim perceives it as such, the Board reasoned [*Little v. Rolling Hills Energy Ltd.*, Board File No. OHS2019-6, December 15, 2022].

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