

SEPTEMBER 2024 MONTH IN REVIEW

Federal

LAWS & ANNOUNCEMENTS

Payroll

Sep 13: The Canada Employment Insurance Commission announced that 2025 EI premium rates will drop 2 cents to \$2.30 per \$100 of insurable earnings for employers and \$1.64 for employees with maximum insurable earnings increasing from \$63,200 to \$65,700. Rates for Québec residents covered by the QPIP will decline 0.33% to \$1.83 for employers and \$1.31 for employees.

Privacy

Sep 19: Proposed legislation ([Bill C-26](#)) amending the *Telecommunications Act* to require operators to take new cyber security measures and report cyber security incidents are in Second Reading in the House of Commons.

Action Point: Make sure you have the [12 data security policies you need](#) to prevent breaches at your company.

Privacy

Sep 16: Newly tabled [Bill C-412](#), the *Protection of Minors in the Digital Age Act*, requires owners and operators of online platforms and apps to take measures to protect the personal information of minors. It also bans publishing false images of persons created or edited by computer software to make the image look authentic, such as nude images of celebrities, and creates a new crime of criminal harassment via use of the Internet, social media, or other digital networks.

Action Point: Find out how to protect your organization from [revenge porn and cyberbullying liability](#) risks.

New Laws

That's the deadline to comment on the Government of Canada's proposed new [strategy](#) for leveraging artificial intelligence to enhance productivity of public service employees and establish guidelines for use of AI by public employees in carrying out their job functions.

Action Point: Find out how to implement a [legally sound AI use policy](#) for your employees.

Employment Benefits

Sep 9: The Canadian Association of Pension Supervisory Authorities (CAPSA) published a new [Guideline](#) outlining a framework that pension plan administrators can use to manage investment risk and meet their fiduciary duties to plan members. The federal Office of the Superintendent of Financial Institutions (OSFI) stated that it expects administrators of federally regulated pension plans to follow the CAPSA Risk Management Guideline.

Employment Benefits

Sep 25: Proposed [changes](#) to the *Canadian Forces Superannuation Regulations* governing the pension benefits of Canadian Armed Forces members would give common-law spouses access to the Optional Survivor Benefit. The OSB is a vehicle that eligible pensioner members can elect to reduce the pension they receive and leave that amount in the pension fund to pay for a survivor benefit for their surviving spouse or common-law partner.

Workplace Violence

Sep 1: Effective today, it's illegal to acquire firearm barrels and handgun slides used for manufacturing guns without a valid firearms license, i.e., a Possession and Acquisition License (PAL) or a confirmed Non-Resident Firearms Declaration form for non-residents. A license is now also required to import firearm barrels and handgun slides, cartridge magazines, and ammunition into Canada.

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

Workplace Violence

Sep 25: Newly [proposed regulations](#) to the *Firearms Act* establish 3 conditions applicants must meet to qualify for an Authorization to Carry (ATC) a restricted

firearm or prohibited handgun for the protection of life: i. the life of the applicant, or those around them, must be in imminent danger from one or more individuals; ii. police protection must not be sufficient; and iii. the possession of the firearm or handgun must be reasonably justified for protecting the applicant from death.

Discrimination

Sep 24: The federal government launched a new \$273.6 million 6-year Action Plan to combat hate and promote inclusion across the country.

CASES

Drugs & Alcohol: Positive Marijuana Test Doesn't Prove Worker Was Impaired at Time of Testing

A railway imposed a 30-day suspension on an engineer who failed post-incident drug testing—oral swab and breathalyzer tests were negative but urine testing was positive for cannabis metabolites. During the investigation, the engineer admitted that he ate marijuana edibles 16.5 hours before his shift. While acknowledging that the engineer's job was safety-sensitive, the union cited cases finding that because marijuana lingers in the body long after the buzz wears off, the mere presence of cannabis metabolites in urine isn't enough to prove that the worker was impaired at the time of testing. The federal arbitrator agreed, noting that the engineer showed no signs of impairment after the incident that led to his being tested. As a result, it struck down both the 30-day suspension and the railway's demand that the engineer submit to random drug testing for 6 months [*Canadian Pacific Kansas City Railway v Teamsters Canada Rail Conference*, 2024 CanLII 87118 (CA LA), September 16, 2024].

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

Payroll: Stress and Anxiety Aren't Grounds to Appeal EI Overpayment Repayment Order

Based on the record of employment (ROE) issued by his former employer, the Canada Employment Insurance Commission paid Mr. A EI benefits of \$595 per week. But the ROE contained an error that the employer later corrected by issuing an amended ROE a day later. Unfortunately, it took the Commission 9 months to process the amended ROE, during which it continued to pay Mr. A \$550 rather than the \$500 per week to which he was actually entitled. By the time the problem was fixed, the overpayment amount had ballooned to \$3,895. So, the Commission sent Mr. A a notice of debt in that amount. And when the agency declined his request to

reconsider, he filed an appeal. The Tribunal allowed the appeal, finding that the Commission had not acted “judicially” in failing to take Mr. A’s ability to pay and the stress and anxiety the overpayment notice caused him. But, alas, there would be no happy ending for Mr. A. The Appeal Division ruled that the Tribunal was legally off-base in taking Mr. A’s stress and anxiety into account and nixed the appeal. The federal court determined that the Division’s ruling was reasonable and refused to overturn it [[Al-Harbawi v. Canada \(Attorney General\)](#), 2024 FCA 148 (CanLII), September 18, 2024].

Termination: No Reason Not to Reinstate Injured Worker to His Old Job

Canadian National Railway terminated a maintenance worker who refused to return to work from a knee injury after he declined 3 modified positions. The union sued, insisting that the worker was capable of performing his old job and that there was no just cause to terminate. The federal arbitrator agreed and ordered CN to reinstate the worker. CN’s conclusion that he wasn’t medically capable of performing his original position wasn’t supported by evidence, especially since he was actually carrying out those duties in the modified work he was performing just before he got fired [[IBEW \(System Council No. 11\) v Canadian National Railway Company](#), 2024 CanLII 80301 (CA LA), August 27, 2024].

Action Point: Find out how to implement a legally sound [return to work policy](#) for injured workers.