

HR Insider Newsletter

Canada's guide to HR Compliance and Management

SEPTEMBER 2026



This Month's Highlights

This newsletter features articles that tackle the workplace issues that matter most—from key 2026 court decisions to supporting caregivers, director liability after resignation, cross-border business travel, and the latest case alerts employers need to know. Read on for insights, and visit our site to access the full articles.



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Top 4 HR Cases of Summer 2026

From remote work accommodations and performance reviews to workplace safety and harassment, this summer's key employment cases tackle some of the toughest issues facing Canadian employers.

Here are the top HR cases of summer 2026, what they mean for employers, and the practical steps HR can take to reduce legal risk.

1 Refusing to Let Underperforming Temp Work from Home Isn't Disability Discrimination

What Happened: Claiming that something in the office building was making her sick, a client service advisor asked for permission to work from home. The company said no because the advisor's performance didn't meet the standards required for permission to telecommute and because the doctor's note she provided was too vague. The advisor sued the company for failure to accommodate her disability, but the human rights commission dismissed the complaint. After a series of lost appeals, she took her claim to the BC Court of Appeal, which upheld the company's decision to deny permission to work from home based on its telecommuting policy and lack of clear medical information as reasonable [*McNeil v. British Columbia (Human Rights Tribunal)*, 2026 BCCA 296 (CanLII), July 10, 2026].

Significance: Employees don't have the right to work from home unless employers allow

them to. Permission may be either express or implied. Employers may also impose reasonable conditions on telecommuting rights, such as requiring them to meet stated performance criteria. The takeaway from *McNeil* is that a company doesn't have to compromise those criteria to accommodate an employee's disability if those standards are reasonable and have been consistently enforced in the past.

What To Do: If you don't establish the rules for telecommuting, you run the risk that employees and courts will do it for you. So, get out front by implementing a legally sound telecommuting policy at your workplace.

2 Ontario Shells Out \$60 Million to Settle Sexual Abuse Class Action

What Happened: An Ontario court approved the \$60 million settlement of the class action lawsuit against the province filed by thousands of individuals for the physical, sexual, and psychological abuse they suffered while placed in provincially operated juvenile detention and reform facilities, aka "Training Schools", between 1953 and 1984. The Ontario government issued a public acknowledgment and expression of regret. Eligible class members will receive compensation ranging from \$5,000 to \$100,000, depending on the severity of the harm they suffered [*Brown v. His Majesty the King in Right of the Province of Ontario*, 2026 ONSC 2880, May 21, 2026].

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Significance: Although Brown didn't happen in a work setting, it's an important reminder of why preventing workplace harassment, abuse, and violence has become an essential part of HR programs.

What To Do: You can't deal with psychological harassment and abuse unless you know it's happening. Don't assume workers will tell you if they're being harassed; most harassment victims stay silent because they don't want to be seen as a troublemaker. One effective strategy is to use pulse surveys to smoke out signs of a toxic workplace.

3 Citing Lack of "Soft Skills" During Performance Review Is Not Bad Faith

What Happened: After four straight years of "meets expectations" or "exceeds expectations," a project manager received a lesser rating of "meets some expectations" and needs to improve during his annual performance review based on his behaviour. The union insisted the rating was unfair since it evaluated "soft skills" and asked the federal arbitrator to change it to "meets expectations." The arbitrator refused citing its lack of jurisdiction to change a performance review that's carried out legitimately and in good faith. The company was well within its rights to point out weaknesses that the manager needed to improve and didn't engage in arbitrary conduct or bad faith by assessing his soft skills during the performance review process [*Canadian Broadcasting Corporation v Association of Professionals and Supervisors (APS)*, 2026 CanLII 63468 (CA SA), June 26, 2026].

Significance: While it's not unusual for employees to challenge negative performance reviews, the key factor working against the union in this case is that the company clearly wanted to retain the employee and provided the criticism in a constructive way to improve

his performance. In so doing, "soft skills" and behaviour toward colleagues were perfectly within bounds.

What To Do: Performance review challenges often involve similar issues. Find out about the 9 most common performance review pitfalls and how to avoid them.

4 Using Personal Cellphone on Job Is Just Cause to Fire Employee on Last Chance

What Happened: Air Canada terminated a Cargo department employee for violating his Last Chance Agreement (LCA) by using a personal electronic device in a restricted area while operating potentially hazardous equipment. Even though it excluded a screenshot taken during a Microsoft Teams videoconference, the federal arbitrator found ample evidence that the employee was talking on his cell phone while in a tractor in an active work area. This was also a clear violation of the LCA for which Air Canada wasn't required to show any lenience [*Air Canada v Iam, District Lodge 140*, 2026 CanLII 70770 (CA LA), June 26, 2026].

Significance: In addition to undermining productivity, employee use of cellphones and other personal devices on the job may create significant safety risks. That makes it essential to establish clear rules governing workplace use of personal devices. The big reason Air Canada won is that it had it did have express rules banning workers from using cellphones, headsets, and other personal devices that could interfere with communication or cause distractions that lead to accidents and injuries.

What To Do: Find out how to implement a legally sound and effective Cellphone/Mobile Device Workplace Use Policy at your own site.

Ask the Expert

Disability Disclosure During a Workplace Investigation

When an employee discloses a disability during a workplace investigation, employers must balance their duty to accommodate with their obligation to maintain a respectful, harassment-free workplace.

Question

We recently completed a workplace investigation where multiple allegations of harassment were substantiated. During the investigation, the respondent disclosed a previously unknown Autism Spectrum Disorder (ASD) diagnosis and provided supporting documentation.

The employee accepted responsibility for most of the conduct and expressed remorse. We have addressed accommodation needs going forward, but we are unsure how the diagnosis should affect our disciplinary decision. Would termination still be appropriate, or should the disability be considered a significant mitigating factor?

Answer

An ASD diagnosis is an important mitigating factor, but it does not automatically prevent termination. Once an employer becomes aware of a disability, it has a duty to consider reasonable accommodation. However, that duty does not excuse harassment or remove the employer's responsibility to provide a safe workplace.



The key question is whether the disability affected the employee's ability to understand or control their behaviour and whether accommodation is likely to prevent future incidents. Remorse, cooperation, disciplinary history, and the seriousness and impact of the misconduct should all be considered.

Explanation

An employer cannot be expected to accommodate a disability it did not know about. Once disclosed, however, the disability should be considered alongside all other relevant factors when determining discipline.

Where accommodation, training, or coaching is likely to address the behaviour, alternatives such as a final written warning, suspension, or last-chance agreement may be appropriate. If the misconduct is severe, poses an ongoing risk, or accommodation is unlikely to prevent recurrence, termination may still be justified. A documented, individualized assessment is the strongest approach from both an employment law and human rights perspective.

Supporting Caregivers as School Returns

For many families, the back-to-school season represents a fresh start. For working caregivers, however, it can also be one of the most demanding times of the year. New routines, changing schedules, childcare arrangements, extracurricular activities, transportation logistics, and the emotional adjustment of children returning to school all converge within a matter of weeks. The result is a period of heightened stress that can have a direct impact on employee well-being, engagement, and workplace performance.

Understanding the Back-to-School Transition

The start of a new school year requires significant adjustment for both children and the adults who care for them. Younger children may experience separation anxiety, while older students navigate new teachers, changing social dynamics, and increased academic expectations. Children with disabilities or additional support needs may face even greater transitions as routines, classrooms, or educational supports change.

Why Flexibility Matters

Flexible work arrangements can reduce employee stress while improving productivity and engagement. Depending on operational needs, flexibility might include adjusted start and finish times, hybrid work options, compressed workweeks, shift swapping, or temporary scheduling accommodations.

Importantly, flexibility should be applied fairly and transparently. Clear guidelines help managers balance operational requirements

with employee needs while maintaining consistency across teams.

Recognizing the Risks

Employees experiencing high levels of stress or fatigue are more likely to experience reduced concentration, impaired decision-making, and lower overall performance. In safety-sensitive industries, distraction can increase the likelihood of workplace incidents, errors, or near misses.

Stress can also contribute to mental health challenges, absenteeism, and presenteeism (when employees are physically present but unable to perform at their usual capacity).

Addressing these risks requires viewing caregiver support not simply as an employee benefit, but as part of an organization's overall health, safety, and wellness strategy.

Creating a Family-Inclusive Workplace

Supporting caregivers during the back-to-school season is about recognizing that employees perform at their best when they have the support they need to manage life's changing demands.

Organizations that demonstrate empathy during seasonal transitions often earn stronger employee loyalty, higher engagement, and improved retention throughout the year. For business owners, HR leaders, and workplace managers, investing in caregiver-friendly practices is more than a compassionate decision; it's a strategic one.

Payroll

Are Corporate Directors Liable for Company's Payroll Debts After They Resign?

Many provinces make corporate directors personally liable for the company's payroll and other debts. Example: Section 81 of the Ontario Employment Standards Act says directors may be jointly and severally liable for wages in certain situations. "Joint and several liability" means that any one director can be made to pay any part or all of the amounts owed (plus penalties for nonpayment).

Directors may still be on the hook even after they resign if they're found to be "de facto" directors, that is, directors that continue to act like directors after the resignation takes effect. Here are two cases illustrating how courts determine if a director who's resigned is liable as a de facto director.

Former Director Is a De Facto Director

Here's a case where a director who resigned was found liable as a de facto director.

Situation

The Canada Revenue Agency penalized a small Ontario engineering firm \$13,000 for failing to remit the right amount of GST in June.

The agency demanded that one of the firm's directors pay the entire penalty out of his own pocket, claiming he was jointly and severally liable under (Sec. 323 of) the Excise Tax Act).

The director denied liability noting that he officially resigned on March 31, three months before the failure to remit took place.

Ruling

The Tax Court found the director liable as a de facto director.

Reasoning

Although the director officially resigned on March 31, his subsequent actions made him a de facto director, including:

- Making telephone calls to subcontractors.
- Sending company payroll records to the accountant.
- Filling out deposit stubs.
- Remitting and signing the actual June GST cheque that led the CRA to fine the firm.

However, the court went on to rule that the director had exercised due diligence while acting as a de facto director to ensure that the firm made the proper GST remittance and wasn't to blame for the inaccuracy in the amount remitted. So, he didn't have to pay the assessment after all.

Parisien v. The Queen, 2004 TCC 276 (CanLII)

Former Director Is Not a De Facto Director

Here's a similar case with a different outcome.

Situation

Hours after the entire board resigned *en masse*, a Manitoba mining company shut down operations and terminated 288 employees without notice. The government found the

company owed the employees \$3.4 million in wages in lieu of notice.

Under Manitoba employment standards law, directors are jointly and severally liable for the unpaid wages of the corporation's employees. So, the government ordered one of the company's directors, named Shier, to pay the entire \$3.4 million. Shier contended he wasn't liable because he resigned before the employees were terminated.

Ruling

The Manitoba Court of Appeal ruled that Shier wasn't liable as a de facto.

Reasoning

As in *Parisien*, the government argued that Shier was a de facto director because he performed the functions of a corporate director after his resignation took effect.

Specifically, he sent a letter to the Minister of Labour stating that "it is with deep regret that we must advise you of our decision" to shut down (emphasis added). And he signed the letter as "VP Finance & CFO" of the corporation. But the court wasn't impressed. Using "we" in the letter and signing it as an officer after having resigned wasn't enough to make Shier a de facto director, it reasoned.

Shier (Re), 2007 MBCA 63 (CanLII)

The key takeaway is that resigning as a director doesn't necessarily end personal liability. Former directors who continue performing director-level functions may be treated as de facto directors and held responsible for company debts. To minimize this risk, directors should make a clean break from their duties once their resignation takes effect.

Live Webinar

The HR Policy Audit Canadian Employers Should Run Before Year-End

[Register Now](#)

Wednesday,
September 23, 2026
at 9:00 a.m. Pacific

Month-In-Review

A roundup of new legislation, regulations, government announcements, court cases, and arbitration rulings. Visit [HRInsider.ca](https://hrinsider.ca) for the complete Month-In-Review. Now available by jurisdiction to keep you focused on what's been happening in your area including legal alerts, law announcements, and recent cases.



Federal

Pay Equity: The wage gap between men and women is slowly shrinking but pay equity is still miles away, concludes a new Statistics Canada report. Women's average hourly wages grew faster (+21.3%) than men's (+15.9%) between 2006 and 2024, with wage gaps varying significantly by age. The biggest disparity, 12.2%, was between women and men of age 55+.

Alberta

Privacy: The Alberta Privacy Commission issued guidance to help employers manage the privacy law implications of the province's new driver's licence and ID cards. Because cards display PHN and citizenship information, collecting them from job applicants and employees may violate the province's Personal Information Protection Act (PIPA). The guidance explains what employers should do to avoid PIPA violations.

British Columbia

Workers' Compensation: WorkSafeBC proposed keeping average workers' compensation base rates at \$1.55 per \$100 assessable payroll for the tenth year in a row. In 2027, rates will decrease for 30% of employers, stay the same for 22%, and increase for 48%. WorkSafeBC will also distribute \$960 million in surplus funds to employers through discounted rates and assessment credits.

Manitoba

Immigration: The federal Francophone Immigration Support Program announced an investment of approximately \$1.3 million for a new project designed to increase Manitoba's French-speaking population by, among other things, streamlining the immigration process for Francophone and bilingual candidates who meet labour market needs.

New Brunswick

New Laws: The federal government is investing nearly \$4.4 million through the Canada Housing Infrastructure Fund (CHIF) Provincial and Territorial (PT) Agreement stream to support four water, stormwater, and wastewater projects across New Brunswick. The province is providing an additional \$2.9 million and municipalities are contributing \$1.57 million. The recipient municipalities: Harvey, Sussex, St. Stephen, and Grand Lake.

Newfoundland and Labrador

New Laws: The combined market value of the province's wild fishery and aquaculture industries reached \$2.11 billion last year, according to the new Seafood Industry Year in Review 2025 report. The market value of the wild fisheries industry was \$1.66 billion, and that of the aquaculture industry was \$453 million. These industries employ approximately 17,000 Newfoundlanders and Labradorians.

Northwest Territories

Health & Safety: The GNWT confirmed a case of Highly Pathogenic Avian Influenza (HPAI), aka bird flu, in a herring gull in Fort Smith. The transmission risk to humans remains very low. There have been 16 confirmed cases of HPAI in birds in the Northwest Territories since 2022.

Nova Scotia

Mental Stress: Nova Scotia and the federal government renewed their memorandum of understanding ensuring residents continued access to the 9-8-8: Suicide Crisis Helpline. Launched in 2023, 9-8-8 is a free 24/7 support service that connects callers with trained responders providing immediate, compassionate help in English or French.

Nunavut

Minimum Wage: Nunavut will become the first jurisdiction in Canada to cross the \$20 minimum wage threshold on September 1, when the territory's general minimum wage rate will increase 42 cents to \$20.17 per hour. Yukon and British Columbia are the only other jurisdictions where the minimum wage is as high as above \$18.

Ontario

Employment Benefits: Newly proposed amendments to pensions Regulations establish a new retirement option called Variable Life Benefits (VLB) under which retirees receive a lifetime income directly from their pension plans with the income amount to vary based on investment returns and how long the participating retiree lives. The Regulations address how plan administrators establish and design VLBs.

Prince Edward Island

New Laws: The *Interprovincial Trade and Mobility Act* (ITMA) and regulations took effect. Result: Goods, services, and labour credentials that meet licensing and regulatory standards in their home jurisdiction will be deemed to meet the necessary criteria in Prince Edward Island. The ITMA also introduces a 10-day service standard to expedite licensing decisions for applicants from participating jurisdictions.

Québec

New Laws: From now on, Québec ministries and agencies that regulate businesses will have to offset each new administrative requirement by eliminating one or two existing requirements. The government will create a single, public registry of business forms to better track regulatory paperwork requirements.

Saskatchewan

Minimum Wage: Saskatchewan announced that it will increase its general minimum wage by 35 cents to \$15.70 per hour on October 1. Even after the increase takes effect, Saskatchewan will still have the second lowest minimum wage in Canada behind only Alberta where the current minimum wage stands at \$15.00.

Yukon

New Laws: Goods approved for sale in one province or territory can now be sold in Yukon without additional testing. However, there are five exceptions for which existing standards continue to apply: boiler and pressure vessels; ozone depleting substances; cervid parts; human tissue; and designated materials under the extended producer responsibility program.

Case Alerts

Leaves of Absence: Enrolling in College while on LTD Leave Is Not Just Cause for Discipline

The Nova Scotia Public Services Commission (PSC) fired a union employee for attending a Bachelor of Journalism degree at King's College while she was on long term disability (LTD). The termination letter cited inconsistency between enrollment in school with being on LTD as the reason for termination. But at the grievance hearing six months later, PSC argued that she was fired for not disclosing that she was enrolled in the course.

Either way, the arbitrator found no just cause for discipline. There was no evidence of any misrepresentation or lack of cooperation on the employee's part. Attending school was not only consistent with her assessed capabilities but also part of her rehab plan. And while the collective agreement required employees to disclose educational enrollment while on sick leave, there was no such disclosure language pertaining to LTD [*Nova Scotia Government and General Employees' Union v. Nova Scotia (Public Service Commission)*, 2026 CanLII 69910 (NS LA), July 8, 2026].

Action Point: The case illustrates the importance of maintaining communication with employees on long-term leave. While the employee in this case enrolled in school, the most common scenario involves employees who go AWOL or disappear while on leave.

Drugs & Alcohol: Double Pre-Employment Drug Testing of New Trainees Is Unreasonable

After extensive hearings, a federal arbitrator ruled that three parts of a railway's drug and

alcohol testing policy were unreasonable:

i. Requiring newly hired trainees for safety sensitive positions to undergo both pre-employment drug testing and a later second drug test before completing their training; ii. A minimum 28-day cannabis ban; and iii. Reducing oral fluid drug testing thresholds from 10ng/ml to 4ng/ml and 2ng/ml. However, the arbitrator upheld other provisions challenged by the union as not unreasonable [*Teamsters Canada Rail Conference – Maintenance of Way Employees Division v Canadian Pacific Kansas City Railway Company*, 2026 CanLII 60171 (CA LA), June 19, 2026].

Action Point: Although this case turned on the reasonableness of the terms of the policy, workplace drug testing cases are often decided based not on what a testing policy says but how it's actually carried out. Find out how to create a legally sound drug and alcohol testing policy at your workplace.

Termination: Unqualified Probationary Prison Guard Wasn't Victim of Racial Discrimination

A Correctional Peace Officer (CPO) who resigned after six months on the job accused his ex-employer of racial harassment and depriving him of the opportunity to write a field training exam or go for further training based on the colour of his skin. The Alberta Human Rights Commission ruled that the CPO had no chance to win and dismissed the complaint citing the employer's "well documented information detailing the extensive efforts" it took to support the CPO during his probationary period. There was also evidence that the CPO wasn't qualified for the job, making him a safety risk to himself,

the inmates, and his fellow CPOs [*Zaman v His Majesty the King in Right of Alberta (Public Safety and Emergency Services)*, 2026 AHRC 73 (CanLII), June 17, 2026].

Action Point: Beware of certain kinds of seemingly legitimate employment practices that may have the effect of inadvertently perpetuating racial discrimination and increasing your liability risks.

Telecommuting: Refusing to Let Underperforming Temp Work from Home Is Not Discrimination

Claiming that something in the office building was making her sick, a client service advisor hired under a temporary contract asked for permission to work from home. The company said no because the advisor's performance didn't meet the standards required for employees to be allowed to telecommute and because the doctor's note she provided was too vague to support her need to work from home. The advisor sued the company for failure to accommodate her disability, but the human rights commission dismissed the complaint.

After a series of lost appeals, she took her claim to the BC Court of Appeal, which refused to second guess the lower court's upholding the company's decision to deny permission to work from home based on its telecommuting policy and lack of clear medical information as reasonable [*McNeil v. British Columbia (Human Rights Tribunal)*, 2026 BCCA 296 (CanLII), July 10, 2026].

Action Point: Employees don't have the right to work from home unless employers allow them to. Permission may be either express or implied. The moral of McNeil is that employers may also impose reasonable conditions on

telecommuting rights, such as requiring them to meet stated performance criteria. The key is to clearly dictate the rules by implementing a legally sound telecommuting policy at your workplace.

Workplace Violence: Uttering a Death Threat Isn't Automatic Grounds for Termination

Should a cleaning worker be fired for saying in Punjabi that she wanted to kill her supervisor? Absolutely, argued the employer, citing its zero tolerance policy for workplace violence and the worker's recent suspension for insubordination. The union contended that the statement wasn't a genuine death threat but an "ill-considered utterance" in "an emotional moment." While acknowledging that expressing a desire to kill one's supervisor is a serious offence, the BC arbitrator concluded that termination was excessive in this case.

Mitigating factors included the worker's 26 years of service, lack of discipline for threats or violence, and candor in admitting she made the threat, which indicated that "her rehabilitative potential is high and that she does not pose a danger to the safety of others" [*Servantage Services Corporation v Unifor Local 3000*, 2026 CanLII 62024 (BC LA), June 18, 2026].

Action Point: The takeaway is that determination of whether violent conduct constitutes just cause for termination generally depends on the specific facts and circumstances involved. The most important thing to do is implement a legally sound and effective Workplace Violence Prevention Game Plan at your site.

Cross-Border Business Trips

25 Questions to Ask Before Arranging Cross-Border Business Trips into Canada

Short-term business travel to Canada can create unexpected immigration risks. While many activities don't require a work permit, others do depending on the work performed—not the length of the trip. Getting it wrong can lead to immigration complications, penalties, costs, and project delays.

Determining Purpose of the Trip

- ☐ Why is the foreign employee traveling to Canada?
- ☐ Can the purpose of the trip be described in one or two clear sentences?
- ☐ Will the employee primarily attend meetings, conferences, or negotiations?
- ☐ Will the employee actually perform services while in Canada?
- ☐ Could the planned activities be viewed as productive work rather than simply business discussions?

Evaluating the Planned Activities

- ☐ Will the employee install, repair, maintain, or test equipment?
- ☐ Will the employee provide technical support or troubleshooting?
- ☐ Will the employee supervise work being performed in Canada?
- ☐ Will the employee train Canadian employees or customers?
- ☐ Will the employee provide services directly to a Canadian client?

Assessing Immigration Risk

- ☐ Has HR determined whether the activities qualify as business visitor activities?
- ☐ Has anyone confirmed whether a work permit exemption applies?

- ☐ If there is uncertainty, has qualified immigration advice been obtained before travel?
- ☐ Is the planned activity different from what the employee has done on previous trips?
- ☐ Has anyone avoided relying on "We've always done it this way" as the compliance strategy?

Reviewing Documentation

- ☐ Does the employee have an invitation letter or other documentation explaining the purpose of the visit?
- ☐ Can the employee clearly explain the planned activities to a border services officer?
- ☐ Are travel documents consistent with the stated purpose of the trip?
- ☐ Does the employee know who the Canadian host is and where the work or meetings will occur?
- ☐ Is supporting documentation organized and readily available if requested?

Strengthening Internal Compliance

- ☐ Does your organization require HR approval before international business travel is booked?
- ☐ Are managers trained to recognize when immigration review is required?
- ☐ Does your organization use a standardized Cross-Border Travel Review Checklist?
- ☐ Are records maintained showing how the business visitor versus work permit determination was made?
- ☐ If a border officer asks, "Why doesn't this traveler need a work permit?" could your organization confidently support its answer?