HR Insider Newsletter

Canada's guide to HR Compliance and Management

NOVEMBER 2026

This Month's Highlights

This month's newsletter explores key HR challenges, from understanding how far return-to-work programs must go to accommodate injured employees to managing intergenerational conflict in teams. We also examine recruitment ethics. Read on for insights, and visit our site to access the full articles.

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How Far Must Return to Work Programs Go to "Accommodate" Injured Employees?

Companies are legally required to make reasonable efforts to accommodate employees who want to return to work after a debilitating injury or illness. Accommodation involves letting employees return to modified duties and schedules commensurate with their current capabilities.

Establishing a Return-to-Work (RTW) program helps ensure compliance with these obligations, which derive from workers' compensation and human rights laws. But there are also limitations on how far RTW must go.

The *Automodular* Case

For nearly two years, an auto supply plant employee with an injured back tries unsuccessfully to return to modified work. The supplier finally runs out of suitable work. Rather than terminate her, it treats her as indefinitely absent due to a disability and promises to let her know when and if it can find her appropriate work. The employee sues the supplier for not doing enough to accommodate her. The Ontario arbitrator throws out the disability discrimination claim, citing the supplier's "credible" early and safe RTW program and genuine efforts to accommodate [*Automodular Corp. v. CAW-Canada, Local 1256 (Petkovska Grievance)*, [2011] CanLII 20787 (ON L.A.)].

Drawing the Line between Reasonable Accommodation & Undue Hardship

Automatically firing employees who can no longer do their job due to a work injury or illness violates the employer's duty under human rights laws to reasonably accommodate disabled employees. Reasonable accommodation involves determining what employees are capable of doing and modifying their duties accordingly. The RTW program essentially manages the accommodation process in accordance with applicable workers' compensation requirements.

Unfortunately, RTW doesn't always result in positive outcomes. Some injuries are too severe to return from; even where employees are willing and able to return to work, the company may not have any work that they can safely and productively perform. For these reasons, the duty to accommodate is limited to "reasonable" accommodations and doesn't require accommodations that would

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impose undue hardship. Unfortunately, in real-life distinguishing between reasonable accommodation and undue hardship isn't so simple. Thus, companies that think a requested accommodation would impose undue hardship run the risk of being second-guessed in court.

Automodular illustrates where courts draw the line between reasonable accommodation and undue hardship. The injured employee's physical restrictions got progressively worse; she could stand for 15 to 30 minutes and sit for 30 to 60 minutes. The company repeatedly gave her modified work but soon ran out of assignments that she was capable of doing. The key is that before reaching that point, it made good faith efforts to accommodate her, including:

- Preparing three separate RTW plans for her.
- Frequently requesting updated medical information and modifying the RTW plans based on that new information.
- Letting her perform jobs of little to no value.

In the arbitrator's words, the company had "proactively and diligently monitored the [employee's] physical condition and thoroughly searched for and offered" her whatever work it could provide that she could safely do. But after all of this and with no improvement in site, the company had run out of assignments and ideas. Thus, the arbitrator concluded that the company accommodated the employee to the point of undue hardship.

Takeaway

There's only so much the RTW process can accomplish. The expectation is not that RTW will achieve positive outcomes in every case but that it will deliver whatever effort and energy is necessary to give the process its best chance of success in all cases. The law recognizes that there may come a point where, in spite of everybody's best efforts, the employee simply can't be reintegrated into the workforce and deployed safely And productively.

Unfortunately, determining when that point is reached is based not on an ironclad formula but the specific circumstances of the particular case.

However, what is true in all cases is that having a well-designed RTW program and implementing it consistently and in good faith significantly reduces the risks of liability for failure to accommodate and bolsters the credibility of the company's determination that the accommodation process has run its course and that ending the employment relationship is necessary to avoid undue hardship.

Managing Intergenerational Conflict in Teams

Today's workplaces can include employees from several generations working side by side, sometimes with very different expectations about communication, technology, leadership, career development, and workplace culture.

These differences can be valuable. A multigenerational workforce brings a broader range of experience, perspectives, technical knowledge, institutional memory, and new ideas. However, when differences turn into assumptions or stereotypes, they can also create tension.

For HR directors and workplace managers, the goal should not be to eliminate generational differences. Instead, employers should create a workplace where employees of all ages are treated respectfully, expectations are clear, and no one feels excluded because of their stage of life or length of experience.

Where Intergenerational Conflict Can Begin

Many workplace disagreements that appear to be "generational" are actually conflicts over communication preferences, expectations, or working styles.

Different expectations can also emerge around working hours and flexibility. Employees who began their careers in workplaces with rigid schedules may have different views about remote work, flexible hours, or work-life balance than employees who entered the workforce when these practices were more common.

Technology can become another source of tension. Younger employees may become frustrated when colleagues require additional support with new software, while more experienced employees may feel dismissed when technological knowledge is treated as more valuable than practical experience.

Conflicts can also arise around advancement. A younger employee may want rapid development and frequent feedback, while a long-serving employee may believe experience and tenure should carry greater weight.

None of these preferences belong exclusively to one age group. Problems arise when employees begin making assumptions based on age rather than getting to know individual colleagues.

Avoid Generational Stereotypes

Labels such as "Baby Boomer," "Gen X," "Millennial," and "Gen Z" can be useful when discussing broad workforce trends, but they should not become shortcuts for judging employees.

Statements such as "young workers have no loyalty," "older workers cannot use technology," or "Millennials need constant praise" can damage workplace relationships and may contribute to age-related discrimination.

Managers should address these comments in the same way they would address other disrespectful workplace behaviour.

Employees should be encouraged to focus on behaviours rather than age. Instead of saying, "He doesn't understand technology because he's older," describe the actual issue: "He needs

additional training on the new scheduling system."

Likewise, rather than saying, "She doesn't want to work hard because she's young," discuss the specific concern, such as attendance, availability, deadlines, or performance expectations.

Build Respect Through Shared Expectations

Clear workplace expectations can prevent many intergenerational conflicts. Managers should establish common standards for communication, professionalism, deadlines, meetings, availability, and respectful conduct. Employees can still have different working styles, but everyone should understand what the organization expects.

Organizations can also create opportunities for employees to learn from one another. Mentoring does not need to flow in only one direction. Experienced employees may share industry knowledge, problem-solving techniques, leadership experience, or institutional history, while newer workers may offer knowledge about emerging technologies, changing customer expectations, or new approaches to workplace communication.

When knowledge-sharing is presented as mutual rather than hierarchical, employees are less likely to feel that their contributions are being undervalued.

Create Workplace Events Everyone Can Enjoy

Company events can unintentionally reinforce generational divides when organizers assume that everyone enjoys the same activities.

A workplace that regularly organizes late-night parties, for example, may exclude employees with caregiving responsibilities, health considerations, long commutes, religious obligations, or simply different social preferences. Conversely, limiting every event to formal lunches may not appeal to employees looking for more interactive opportunities.

Variety is usually the better approach. Employers can rotate between team lunches, volunteer days, games, wellness activities, learning events, seasonal celebrations, outdoor activities, recognition programs, and informal gatherings. Participation should generally be voluntary, particularly when events take place outside normal working hours.

Ask employees what they actually enjoy rather than guessing based on age. A short anonymous survey can help HR determine preferred activities, times, locations, accessibility needs, and dietary considerations.

Events should also be physically and socially accessible. Consider mobility requirements, transportation, food restrictions, alcohol-free options, scheduling, sensory needs, and whether employees who work remotely or at different locations can participate.

Build Morale Around Belonging, Not Age

Strong workplace morale does not come from forcing generations to behave alike. It comes from creating an environment where different employees can contribute without being stereotyped or excluded.

Managers should recognize accomplishments fairly, provide development opportunities across age groups, encourage respectful disagreement, and intervene when age-related jokes or assumptions become inappropriate.

When employees understand that experience, innovation, adaptability, technical ability, and fresh perspectives can all coexist, generational diversity becomes an organizational strength rather than a source of conflict.

Recruitment Ethics

Building Fair and Inclusive Hiring Practices

Recruitment decisions can shape an organization for years, but even well-intentioned hiring processes can create barriers for qualified candidates. Bias may enter recruitment through job advertisements, résumé screening, interview questions, assessment methods, accessibility practices, or seemingly informal decisions about whether someone will "fit" with the team.

For HR directors and workplace managers, ethical recruitment means creating a process in which candidates are assessed on legitimate job-related qualifications rather than personal characteristics, stereotypes, assumptions, or unnecessary barriers. A fair hiring process can also strengthen an organization's reputation, expand its talent pool, and reduce the risk of discrimination complaints.

Recognizing Discrimination in Recruitment

Job seekers may experience discrimination for many different reasons. Depending on applicable human rights or employment legislation, protected characteristics can include race, ethnicity, colour, national or ethnic origin, religion, sex, gender identity or expression, sexual orientation, age, disability, family or marital status, pregnancy, and other protected grounds.

Discrimination is not always obvious. A recruiter may never deliberately exclude someone because of their race, gender, disability, or another characteristic, yet recruitment practices can still have discriminatory effects.

Examples may include:

- Rejecting candidates because their names, accents, cultural backgrounds, or places of education seem unfamiliar.
- Assuming that women, parents, or caregivers will be less available for demanding roles.
- Preferring younger applicants because they are perceived as more energetic or technologically capable.
- Assuming an older candidate will have difficulty adapting to new technology.
- Screening out candidates with employment gaps that may be connected to disability, caregiving responsibilities, parental leave, or other personal circumstances.
- Conducting interviews in inaccessible locations or using assessments that unnecessarily disadvantage candidates with disabilities.
- Making assumptions about whether someone can perform a job because they use a mobility device or require another accommodation.
- Evaluating candidates based on gender expression, religious clothing, appearance, or other characteristics unrelated to job performance.

Organizations should also be cautious about vague concepts such as "culture fit." When poorly defined, culture fit can become a way of selecting candidates who resemble existing employees rather than those who have the skills and behaviours necessary for success.

Identify Unfair Practices Before Recruitment Begins

Ethical recruitment starts before a vacancy is advertised. HR should review hiring

criteria with managers and ask whether every requirement is genuinely necessary. Requirements that have simply been carried forward from older job descriptions can unintentionally eliminate capable candidates.

For example, does the position truly require a driver's licence, or does the employee simply need reliable transportation to different locations? Does the employee genuinely need to lift a specific weight independently, or could equipment or another reasonable accommodation allow the work to be performed safely?

Organizations can also reduce bias by establishing clear selection criteria before reviewing applications. Structured scoring systems, standardized interview questions, diverse hiring panels, and documented decision-making processes can help recruiters focus on qualifications rather than subjective impressions.

Recruiters should periodically examine hiring outcomes as well. If qualified candidates from particular demographic groups consistently disappear at the same stage of recruitment, HR should investigate whether an unnecessary barrier may exist.

Writing Fair and Accessible Job Postings

Job advertisements should describe what a person needs to accomplish rather than unintentionally describing the type of person managers imagine performing the job.

Avoid unnecessarily gendered, age-coded, culturally specific, or exclusionary language. Terms such as "young and energetic," "digital native," or "physically fit" may discourage qualified applicants and may create discrimination concerns.

Separate essential qualifications from preferences and avoid inflated credential requirements. If five years of experience is not genuinely necessary, requiring it may unnecessarily reduce the candidate pool.

Employers should also clearly communicate their willingness to provide reasonable accommodations during recruitment. Candidates should know who to contact if they require an accessible interview format, additional time for an assessment, assistive technology, an accessible meeting location, or another adjustment.

Accessibility should be considered from the beginning rather than addressed only after a candidate encounters a barrier.

Conducting Inclusive Interviews

Interviews should focus on whether candidates can perform the essential responsibilities of the position.

Ask all applicants a consistent set of core questions and avoid questions about protected personal characteristics. Recruiters generally do not need to know whether someone plans to have children, follows a particular religion, has a disability, is married, or has health conditions. Instead, ask job-related questions such as whether the candidate can meet the position's established scheduling or travel requirements.

Inclusive behaviour also matters. Recruiters should pronounce names correctly, respect candidates' stated names and pronouns, speak directly to candidates with disabilities rather than companions or interpreters, and avoid making assumptions about what accommodations someone may need.

Interviewers should document objective reasons for hiring decisions rather than relying on impressions such as "not the right personality" or "didn't seem like a fit."

Month-In-Review

A roundup of new legislation, regulations, government announcements, court cases, and arbitration rulings. Visit 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

Payroll: Newly revised regulations require attestation rather than a signature to register for a Social Insurance Number (SIN). Applicants may no longer mark their applications if they're unable to sign. Registration is also now mandatory and the Commission is required to assign a SIN to persons who are legally required to have one and don't apply.

Alberta

New Laws: Separating from Canada would cost Alberta between $50 billion to $170 billion in the first five years, according to an independent study from the University of Calgary commissioned by the government. These costs are in addition to separation's impact on Alberta's economic growth and fiscal position. Albertans will vote on the separation referendum on October 19.

British Columbia

Leaves of Absence: Newly effective *Employment Standards Act* (ESA) regulations amendments allow employees to take up to 24 months of combined reservist leave in a 60-month period for military skills training, deployment for Canadian Armed Forces operations, and pre- or post-deployment activities. Under previous rules, reservist leave for training was limited to 20 days per year.

Manitoba

Health & Safety: Revised *Workplace Safety and Health* (WSH) Regulations requiring employers to provide free menstrual products in workplace washrooms at no cost to employees took effect in Manitoba. Employers must also provide at least one choice of tampon and one choice of pad along with a covered container for disposal of menstrual products near each washroom toilet.

New Brunswick

Minimum Wage: New Brunswick closed public consultations on the current provincial minimum wage, the first such consultations in 10 years. On the table is not just the minimum wage amount but how and how often it's determined. The minimum wage is currently updated annually on April 1 based on the consumer price index.

Newfoundland and Labrador

Training: OHS fall protection certification training requirements for working at heights of three metres or more are changing. Starting January 1, 2027, a new 8-hour Working at Heights training course will replace the 16-hour course. When certificates expire, workers must complete the new 8-hour course to renew certification. Certificates will still remain valid for three years.

Northwest Territories

Minimum Wage: The Government of Northwest Territories (GNWT) increased its general minimum wage by 25 cents to $17.20 per hour. That's tied with Prince Edward Island for fifth highest in Canada. This is the fourth year under the new system basing annual minimum wage increases on the territories' consumer price index.

Nova Scotia

Overtime: The Nova Scotia Assembly tabled and will likely pass Bill 256 amending the Labour Standards Code (LSC) by reducing the overtime threshold from 48 to 44 hours per week. The Bill also expands overtime pay eligibility to include extra hours that are voluntary and permitted, not just overtime hours required by employers. Effective date: April 1, 2027.

Nunavut

New Laws: To help foster parents pay for school supplies and other day-to-day care expenses, Nunavut increased daily foster care rates by 45%. The rate increase is retroactive to April 1, 2026. The Department of Family Services will issue lump sum retroactive payment covering April 1, 2026, to August 31, 2026, on September 25.

Ontario

Minimum Wage: Ontario raised its general minimum wage 35 cents to $17.95 per hour on October 1st. Separate minimum wages also increased by the same 2%: Students under 18: $16.90; Homeworkers: $19.70; Hunting & fishing guides: $89.75 per day (< 5 consecutive hours in a day); and Hunting & fishing guides: $179.50 per day (5 or more hours in a day).

Prince Edward Island

Hiring & Recruiting: The province launched a new online registry of skilled tradespeople to help employers and contractors verify credentials and verify whether a person holds a Prince Edward Island Certificate of Qualification or Red Seal endorsement and the trade in which they're certified. Searches can be done using identifying information such as a name and certification number.

Québec

New Laws: To help small and medium-sized enterprises (SMEs) affected by U.S. tariffs, Québec expanded eligibility for Emergency Assistance Program (PAUPME) Customs Tariffs to SMEs with revenues between $200,000 and $2 million. A new Program rule also exempts SMEs in the forestry industry from having to demonstrate profitability for at least one of the last two financial years.

Saskatchewan

New Laws: Saskatchewan published a Data Centre Framework setting out the five criteria it will use when assessing proposed AI data centre projects: i. Canadian ownership; ii. support for Canadian data and AI sovereignty; iii. creation of Saskatchewan jobs and partnerships; iv. industry experience; and v. self-supplied power generation.

Yukon

Health & Safety: Seasonal influenza activity in Yukon has started earlier than usual this year, the Chief Medical Officer reports. Laboratory-confirmed cases of influenza A, including influenza-related hospitalizations and one outbreak, have been identified in Yukon starting in mid-August. Yukon typically sees an increase in influenza cases beginning in November.

Case Alerts

Discrimination: $20,000 Cap on Discrimination Damages Is Constitutional

The *Canadian Human Rights Act* allows individuals who suffer discrimination to sue for pain/suffering and willful/reckless special damages of up to $20,000. A union representing 170,000 federal employees and legal clinic representing impoverished workers teamed up to file a lawsuit claiming that the damages cap violated Section 15(1) of the Charter guaranteeing the right of all individuals to "equal protection and equal benefit of the law without discrimination." The federal court disagreed and dismissed the case. But it also noted that while constitutional, the $20,000 cap was established in 1998 and way out of whack with inflation. Unfortunately, adjusting the cap was the responsibility of Parliament, not the courts, it concluded [*Canada (Public Service Alliance) v. Canada*, 2026 FCA 143 (CanLII), August 27, 2026].

Action Point: Although upholding the current cap on special damages is good news for employers, the best liability management strategy is to avoid discrimination in the first place by implementing a legally sound Non-Discrimination Policy at your workplace.

Payroll: Wrongfully Dismissed CFO Is Entitled to Termination Notice

Told that her services were no longer needed, a CFO sued the construction consultation firm where she worked part-time for wrongful dismissal and $100,000 in termination notice. The firm contended that the CFO was an independent contractor. After considering all of the evidence, the Alberta concluded that the CFO was an employee: her contract was entitled an "employment agreement"; the firm controlled her activities and gave her authority to write cheques, a power it also assigned to its three individual principles; the CFO used only materials and personnel provided by the firm and had no direct financial stake or risk in the business; the firm paid her liability insurance premiums and other business expenses. At most, the CFO was a dependent contractor. **Result**: The firm had to pay her termination notice [*Cooper v GFI Solutions Ltd*., 2026 ABCJ 142 (CanLII), September 9, 2026].

Action Point: Don't make the same mistake the company in Cooper did! The best strategy for avoiding misclassification errors and penalties is not by focusing on how the contract describes a hiree but by applying the 4 factors that CRA and the courts use to determine whether a worker is an employee or independent contractor.

Termination: Employer Can't Prove that Fired Nurse Committed Harassment

After suspending her twice, a long-term care facility terminated a nurse for allegedly harassing colleagues, creating a stressful work environment, and similar conduct-related offences. But the British Columbia arbitrator said there wasn't enough evidence to support the charges. The evidence suggested that the nurse did her job well and was "very nice to the residents." There were no written harassment complaints against her—while some coworkers found her difficult to work with, they stopped short of accusing her of harassment or abuse. Not having a written harassment policy did little to help

the employer's case. As for remedy, since the nurse didn't want to be reinstated, the arbitrator ordered a hearing to determine how much money the facility would have to pay her in damages [*Select Senior Services Ltd. (Lakeshore Care Centre) v Hospital Employees' Union*, 2026 CanLII 92311 (BC LA), August 28, 2026].

Action Point: *Select Senior Services* is an important reminder of the importance of implementing a Harassment Prevention and Compliance Game Plan at your workplace that provides for investigating complaints and objectively and reasonably assessing the findings in deciding on discipline.

Discipline: History of Lax Enforcement Undermines Suspension of Forklift Driver

Did a senior Shipper Loader Operator with almost 40 years of excellent service deserve to be suspended for five days for carelessly backing his front-end loader of a truck? Based on video footage and witness testimony, the New Brunswick arbitrator ruled that the accident and resulting $23,000 in property damage was the result of the Operator's negligence in not checking his exterior mirrors. But while discipline for negligence was appropriate—especially given the Operator's failure to fully accept the blame for what happened—the penalty was too harsh given the company's history of not meting out any discipline for similar safety incidents. Result: The arbitrator reduced the penalty from a five-day suspension to a written warning [*United Brotherhood of Carpenters and Joiners of America, Local 683, on Behalf of Dale Barton v JD Irving Ltd (Grand Lake Timber)*, 2026 CanLII 78802 (NB LA), July 27, 2026]. .

Action Point: In addition to compromising a potential due diligence defence, a history of failing to enforce safety rules undermines your ability to impose discipline for future violations. Find out how to implement a legally sound progressive discipline policy at your workplace that you can use to enforce safety and other HR rules and policies.

Retaliation: Just Because Employee Felt Threatened Didn't Mean He Was Threatened

An employee who filed a grievance against his employer signs a settlement resolving the issues and requiring both parties to keep the terms confidential. He later complains to an OHS officer about being threatened with reprisals during the grievance process. So, the employer's lawyer sends the employee an email accusing him of violating the confidentiality clause of the settlement agreement. In response, the employee submits an OHS reprisals complaint. The OHS investigator dismisses the complaint. The Nova Scotia Labour Board rejects the employee's appeal. While he might "have felt threatened or intimidated" by them, reasoning that the lawyer's emails "were solely for legitimate business reasons" and didn't constitute an illegal threat of reprisal [*Jamieson v Halifax Regional Centre for Education*, 2026 NSLB 131 (CanLII), September 15, 2026].

Action Point: The moral of Jamieson is that reprisal is based on an objective rather than subjective standard. In other words, acts and deeds don't constitute threats or intimidation if a reasonable person wouldn't perceive them as such, even if that's how the particular worker experiences. The overriding objective is to keep the lines clear. Find out how to avoid inadvertent reprisals or retaliation.

Ask the Expert

Record Retention After Employee Death

Ontario employers should use a record-retention schedule based on the type of record rather than relying on a single seven-year rule for every personnel file.

Different employment, payroll, recruitment, and volunteer records may have different retention periods, and an employee's death does not shorten an otherwise applicable retention requirement.

Question

We are reviewing our Ontario HR record-retention practices and have seen different references to three-, five-, six-, and seven-year retention periods. How long should we keep employee records after someone leaves the organization, and does anything change if the employee has passed away?

Answer

Core records such as an employee's name, address and start date generally must be retained for three years after employment ends, while vacation records have their own longer retention requirements. Ontario's newer recruitment provisions also require covered employers to retain publicly advertised job postings, associated application forms and prescribed applicant information for three years.

An employee's death does not ordinarily reduce these retention periods. Where a requirement runs from when employment ends, the employee's death would generally mark the end of employment and the normal retention period would continue from there.

Explanation

The often-cited seven-year period may come from an internal HR practice or a specific law rather than the ESA generally. For example, certain records under Ontario's *Employment Protection for Foreign Nationals Act* must be kept for seven years, while CRA records are generally retained for six years from the end of the relevant tax year.

Organizations should also keep volunteer postings, applications, interview notes, and selection records for a consistent internal period, such as two to three years, while limiting access to sensitive information. The Ontario Human Rights Commission also takes the position that Human Rights Code protections can extend to volunteers in work-like relationships.