BIRD RICHARD
LAWYERS FOR EMPLOYERS

EMPLAWYERS' UPDATE

Winter 2026

A Quarterly Newsletter on Labour and Employment Law Issues

In this Issue

Bird Richard
130 Albert Street, Suite 508
Ottawa, Ontario K1P 5G4
T 613.238.3772
F 613.238.5955
www.LawyersForEmployers.ca

New Ontario Job Posting Requirements in Force

On January 1, 2026, Ontario implemented sweeping new changes to public job posting requirements under the Ontario *Employment Standards Act, 2000* (the "*ESA*"). Heralded by the Ministry of Labour as an initiative to promote transparency and fairness for job seekers, the impact on employers is an additional administrative burden in the hiring process.

Employers with 25 or more employees are now required to:

i) disclose whether the publicly advertised job is for an existing vacancy;

ii) include the expected total compensation, or at the very least, an accurate range with the difference between the top and bottom compensation, and rates must not exceed $50,000. The requirement does not apply where the expected annual compensation is more than $200,000 or where the top end of the range is above $200,000;

iii) state in the job posting whether AI is being used to screen, select, and assess applicants;

iv) notify any candidates granted an interview within 45 days of the interview whether they have been hired;

v) prohibit any inclusion of requirements relating to Canadian experience; and

vi) retain job postings and any associated application forms, as well as the information provided to applicants after an interview, for a period of three years.

While most employers will generally fall under this new implementation with respect to publicly advertised jobs, there are some exclusions that are worth noting. The new requirements will not apply to "help wanted" signs or general recruitment campaigns, internal job postings that are restricted to existing employees, and postings for work to be performed outside of Ontario.

To ensure employers are adhering to the changes, employers should:

- Review compensation structures to adhere to total compensation posting requirements;
- Train managers on AI disclosure obligations in the hiring process;
- Update job posting templates; and
- Establish or revise record retention policies.

New Leaves for Employees under the *Canada Labour Code*

As of December 12, 2025, the *Canada Labour Code* (the "*Code*") radically expanded federally regulated employees' leave rights, while placing additional administrative and compliance responsibilities on their employers.

Federally regulated employees are now entitled to:

i) New Pregnancy Loss Leave:

   a. an employee's pregnancy, or the pregnancy of their spouse or common-law partner, does not result in a live birth; or

   b. a surrogacy does not result in a live birth.

   Employees are entitled to up to eight weeks' paid leave for stillbirths (on or after 20th week of pregnancy). The first three days of leave are paid, with the remainder of the leave being unpaid.

   For other types of pregnancy loss, employees may take up to three days of paid leave.

ii) Enhanced Bereavement Leave for Death of a Child:

   a. significantly enhanced bereavement leave following the death of a child. What was once a maximum of 10 days' leave with three of those days being paid has now been increased to eight weeks of unpaid bereavement leave.

In addition, these amendments will broaden administrative responsibilities for federally regulated employers relating to all statutory leaves. Employers must now maintain sufficient records supporting leave requests of their employees and ensure paid leave is not improperly included in wage-based calculations. Additionally, employers must revise workplace policies, postings, and internal materials to reflect the updated statutory leave framework.

Failure to comply with these requirements may result in monetary penalties of up to $100,000 for employers.

Updated Employer Obligations for Mass Terminations

Ontario strengthened their employer obligations for mass terminations under the *Employment Standards Act, 2000* (the "*ESA*"). In addition to existing requirements relating to mass terminations, employers must provide a new Employment Ontario Career Support information sheet to employees terminated as part of a mass termination.

A mass termination is deemed to have occurred where an employer terminates 50 or more employees at a business location within a four-week period; triggering specified notice requirements and reporting obligations to the Ministry of Labour.

Mass termination provisions now require employers to provide affected employees with the following on the first day of notice:

- Individual notice of termination, or indefinite layoff compliant with the *ESA*;
- A copy of the complete Form 1 (Notice of Termination of Employment) that was delivered to the Director of Employment Standards; and
- The most recent version of the Employment Ontario Career Supports information sheet.

The new information sheet will provide the employee with various services available through Employment Ontario, including: job matching referrals, financial assistance for training, transportation, and dependent care, information on local jobs, salaries, and training requirements, and access to apprenticeship opportunities.

Ontario Court of Appeal Upholds Denial of Claim Deemed Untimely

In *Brady v. Waypoint Centre for Mental Health Care,* 2025 ONCA 722, the Ontario Court of Appeal has upheld the lower court decision dismissing a claim on the basis that it was filed after the applicable limitation period had expired. The Court of Appeal's decision reinforced Ontario's strict timelines under the *Limitations Act, 2002.*

The case involved an employee who began a temporary assignment as an acting manager in October 2018. The acting position was not a bargaining unit position. On April 30, 2020, the employer advised the employee that she would be terminated as acting manager and returned to her position in the bargaining unit.

Around May of 2020, the employee learned that original position within the bargaining unit was not available and she would instead be placed her in a frontline clinical social work position. The employee immediately commenced medical leave, allegedly due to the trauma of reassignment to a more junior position.

On October 27, 2022 — more than two years after her reassignment and subsequent medical leave — the employee commenced a wrongful dismissal claim.

The claim was initially heard by a Superior Court judge, who ruled that the Court lacked jurisdiction over the claim as it had exceeded the two-year limitation period and was therefore statute-barred.

On appeal, the employee challenged the conclusions of the Superior Court. The employee argued that the limitation period should be calculated starting from when her claim was discoverable on April 30, 2020. Calculating two years from April 30, 2020, with an additional 183-day pandemic suspension of limitation periods, would allow her to commence her claim until October 30, 2022.

The Court of Appeal rejected that reasoning, concluding that the claim became discoverable after the pandemic suspension ended on September 14, 2020. The employee's October 2022 filing was too late. The Court of Appeal dismissed the appeal and directed the appellant to pay the respondent's costs in the amount of $25,000.

This recent decision reinforces that COVID-19 grace periods have limits. The Court of Appeal made it clear that limitation periods are not 'COVID-optional' and do not extend claims indefinitely.

Employee Bound to Settlement Agreement

In *Johnstone v. Loblaw*, 2025 ONSC 4755, an Ontario court ruled that an employee's acceptance of a severance package via email created a binding settlement, despite having attempted to renegotiate after his housing purchase fell through following termination.

The employee, who had worked for the employer for seven years, had relocated from Winnipeg to Ottawa in 2022 at his employer's request. Shortly after the move, the employer terminated the employee's employment without cause while the employee was in the process of closing on a house. The purchase transaction was frustrated and the employee alleged that he sustained damages relating to his inability to receive a mortgage due to his termination.

The employee retained legal counsel to negotiation terms of settlement. The parties agreed to terms that included an 8-month notice period, $1,500 toward legal fees, and confirmation that relocation benefits would be provided with a letter verifying his ongoing salary for mortgage purposes.

The negotiations addressed housing, with the employee outlining standard relocation entitlements, including: up to $25,000 in household goods, $20,000 for temporary accommodation, $8,000 for home purchase closing costs, and a mortgage subsidy of $5,910 over five years. Importantly, the employer made it clear that it would not guarantee the employee's mortgage payments or make the settlement conditional on the closing of his home purchase.

After multiple email exchanges between counsel, the employee accepted the employer's proposal. The employer drafted minutes of settlement reflecting all agreed-upon terms. Upon receiving the minutes of settlement, the employee's counsel raised three additional items that had never been discussed during negotiations: 1) making the settlement conditional on the purchase of his home, 2) extending temporary living expenses, and 3) guaranteeing a specific performance rating.

The employer refused to include these new terms, which were not raised and/or agreed to during negotiations. In the eyes of the employer, the parties arrived at a binding settlement. Although the employee had not signed the minutes of settlement, its terms had been mutually agreed upon in an email between the parties.

The employee commenced an action against his former employer, claiming wrongful dismissal and seeking damages for his failed house purchase.

The Court found that the email acceptance created a binding agreement on all the essential terms outlined: notice period, legal fees, benefits, relocation expenses, and employment verification for mortgage purposes. The Court also found that the employee's additions were "not changes to the supporting documentation, but attempts to change the essential terms of the agreement." The employee's attempt to change their deal was simply "buyer's remorse" and not a valid legal basis to undo the original agreement. Even without a signed formal release, a binding settlement existed since the terms were agreed upon in correspondence, and thus, the Court dismissed the employee's claim, enforcing the original agreement.

This case demonstrates just how important clear communication and documented terms are in employment matters. Employers should always be meticulous in the negotiation of offers, because courts will enforce deals based on agreed-upon terms.

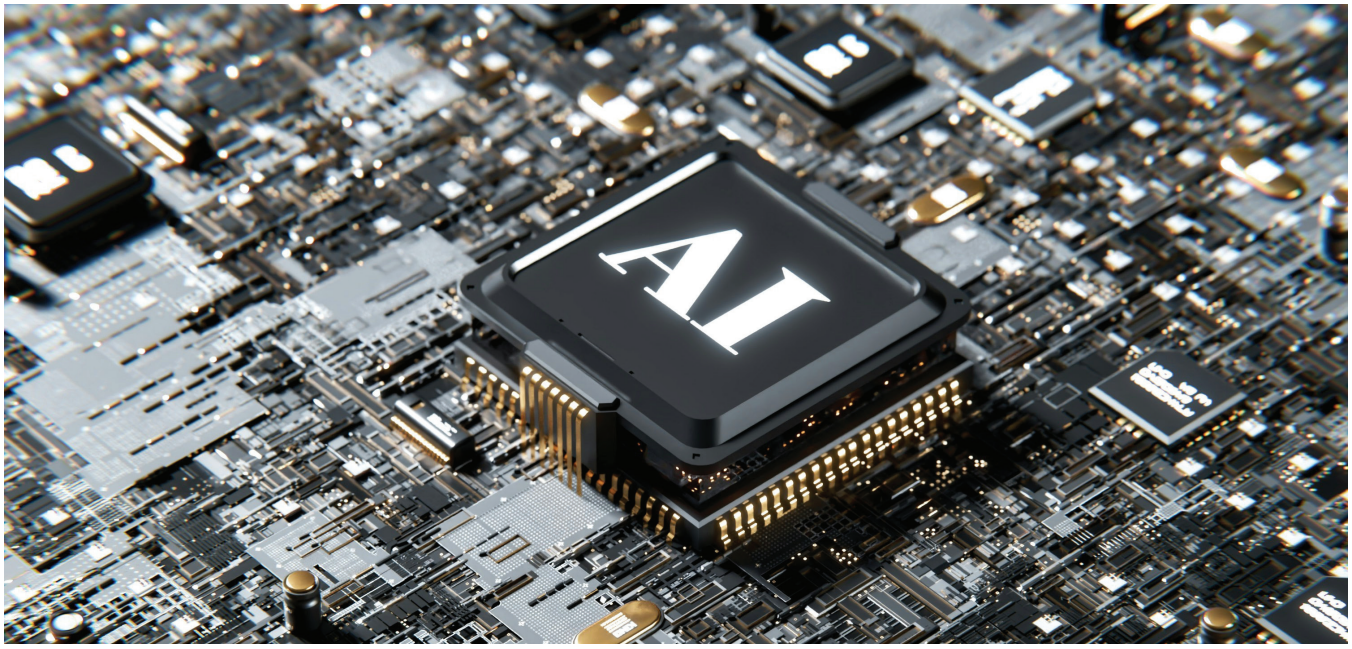

Photo by Igor Omilaev on Unsplash

AI in the Workplace

Artificial intelligence (AI) is rapidly transforming how workplaces operate in Ontario. AI tools are radically changing how employers make decisions regarding recruitment, performance management, and workplace investigations. It is vital that moving forward, Ontario employers understand both the legal and practical implications, and risks of AI in the workplace.

Under common law, employers owe a duty of good faith to their employees by basing all employment decisions on accurate information. With the presence of AI, the way in which these employment decisions are made is changing. Employers may now be relying on AI generated information to inform staffing-related decisions. In doing so, the employer risks breaching its duty of good faith if the AI generated information is inaccurate.

For example, an employer chooses to use an AI tool to assist with an employee interview during a workplace investigation. The AI generated information may contain errors based on incorrect interpretations of tone, or failure to capture non-verbal cues. Relying on the AI in this scenario may result in conclusions that are misleading. As such, it is imperative that human oversight be conducted.

Employers must also ensure that AI in the workplace aligns with existing internal policies, employment contracts, and collective agreements. Employers with unionized employees should be particularly aware of grievances that could arise over whether the presence of AI monitors infringes on privacy rights. It is therefore recommended that before implementing AI systems in the workplace, employers should consult with their legal counsel to discuss the risks, if any, before deployment.

Lastly, AI systems are only effective to a certain extent. Bias and discrimination can arise in various ways. For example, if an employer chooses to adopt AI tools throughout the recruitment or training process, it is possible for AI to inadvertently favour candidates with traditionally gender or demographic-specific traits. Accordingly, it is crucial for employers to exercise caution when relying on AI-generated information. Employers are encouraged to incorporate tools, such as the Human Rights AI Impact Assessment, to ensure that the use of AI is not contravening Ontario's *Human Rights Code*.

Key Takeaways for Employers

AI can deliver real efficiencies within the workplace, but it also comes with legal impacts that employers cannot afford to ignore. To ensure employers are evolving with the times and maintaining compliance, they should:

- Treat AI as a component to a broad decision-making process, one that is an accessory to human judgment;
- Involve HR and/or legal teams in the governance of AI tools; and
- Implement controls that limit AI to an extent to not infringe on employees' rights or privacy